506

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 1018.

HARRISON B. SCHULER, PLAINTIFF IN ERROR,

vs.

J. N. ISRAEL AND THE LACLEDE BANK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED SEPTEMBER 27, 1886.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the eastern district of Missouri, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said circuit court before you, at the March term, 1886, thereof, between Harrison B. Schuler, plaintiff, and J. N. Israel, defendant, and the Laclede Bank, garnishee, a manifest error hath happened to the great damage of said plaintiff, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 26th day of June, in the year of our Lord one thousand eight hundred and eighty-six.

Issued at office, in the city of St. Louis, with the seal of the circuit court of the United States for the eastern district of Missouri, dated as aforesaid.

[Seal of the United States Circuit Court, Eastern District of Missouri.]

A. P. SELBY,
Clerk Circuit Court United States, Eastern District of Missouri.

Allowed by—
SAMUEL TREAT, *Judge.*

1*a* [Endorsed:] No. 2657 & 2658. United States circuit court, eastern district of Missouri. Harrison B. Schuler *vs.* J. N. Israel *et al.* Writ of error to the circuit court of the United States, E. dist. of Missouri. Returned and Filed 26th day of June, 1886. A. P. Selby, clerk.

Return to Writ.

UNITED STATES OF AMERICA, }
Eastern District of Missouri, } *ss:*

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the within-entitled case, with all things concerning the same.

In witness whereof I hereto subscribe my name and affix the

seal of said circuit court, at office, in the city of St. Louis, this 14th day of September, A. D. 1886.

[Seal of the United States Circuit Court, Eastern District of Missouri.]

A. P. SELBY,
Clerk of said Court.

2 The United States of America to J. N. Israel and the Laclede Bank, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Missouri, wherein Harrison B. Schuler is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable —— ——, judge of the circuit court of the United States for the eastern district of Missouri, this 26th day of June, in the year of our Lord one thousand eight hundred and eighty-six.

SAMUEL TREAT,
Judge United States District Court, Eastern District of Missouri.

Service of above citation acknowledged this 26th day of June, 1886.

[Endorsed:] United States circuit court, eastern district of Missouri. Harrison B. Schuler *vs.* J. N. Israel *et al.* Citation. Filed June 26, 1886. A. P. Selby, clerk.

3 UNITED STATES OF AMERICA, }
Eastern District of Missouri, } *ss:*

In the Circuit Court of the United States in and for said District.

Be it remembered that on the 17th day of May, A. D. 1886, the following, among other, proceedings were had and appear of record in said court, to wit:

Transcript Filed.

HARRISON B. SCHULER, Plaintiff,
vs.
C. W. ISRAEL and J. N. ISRAEL, Defendants. } 2657.

Now comes plaintiff, by Dyer, Lee & Ellis, his attorneys, and files transcript from the St. Louis circuit court and enters his appearance herein.

Transcript Filed.

HARRISON B. SCHULER, Plaintiff,
vs.
C. W. ISRAEL and J. N. ISRAEL, Defendants. } 2658.

Now comes plaintiff, by Dyer, Lee & Ellis, his attorneys, and files transcript from the St. Louis circuit court and enters his appearance herein.

Said transcript in case No. 2657 is in words and figures following, to wit:

Transcript in Case No. 2657.

STATE OF MISSOURI, } *ss:*
City of St. Louis, }

Be it remembered that heretofore, to wit, on the 2nd day of November, A. D. 1885, there was filed in the office of the clerk of the circuit court, city of St. Louis, a petition and affidavit for at-
4 tachment, which is in the words and figures following, to wit;

Petition.

In the Circuit Court, City of St. Louis. December Term, 1885.

HARRISON B. SCHULER, Plaintiff,
vs.
C. W. ISRAEL and J. N. ISRAEL, Composing Firm of C. W. Israel & Co., Defendants.

STATE OF MISSOURI, } *ss:*
City of St. Louis, }

Plaintiff states that the defendants are citizens of the State of Texas, residing at Henrietta, in that State; that they are and were at all of the times hereinafter stated copartners, doing business at Henrietta, Texas, under the name and style of C. W. Israel & Co., and at Wichita Falls, Texas, under the name and style of Exchange Bank, and at Harold, Texas, under the name and style of Exchange Bank.

Plaintiff, for a cause of action against the defendants, states that on the — day of May, 1883, the defendants, by their firm name, made, executed, and delivered to the plaintiff their certain promissory note, dated at Henrietta, Texas, whereby they promised, for value received, to pay the plaintiff, or order, twelve months after the date thereof, the sum of ten thousand dollars, with interest thereon from date at the rate of twelve per cent. per annum.

That on the — day of September, 1885, the defendants paid on said note the sum of two thousand five hundred dollars; that the balance of said note and interest is due and unpaid, for which plaintiff prays judgment.

DYER, LEE & ELLIS,
Attorneys for Plaintiff.

Affidavit.

STATE OF MISSOURI, } ss:
City of St. Louis, }

Harrison B. Schuler, the plaintiff in the above-entitled
5 cause, on oath states that he has a just demand against the defendants now due, and that the amount which plaintiff ought to recover, after allowing all just credits and set-offs, is the sum of ten thousand dollars; that the plaintiff has good reason to believe and does believe that the defendants are not residents of the State of Missouri.

H. B. SCHULER.

Subscribed and sworn to before me this November 2nd, 1885.
[SEAL.] CHAS. F. VOGEL, *Clerk.*

Thereupon an attachment bond was filed in said cause, which is as follows, to wit:

Attachment Bond.

Know all men by these presents that we, Harrison B. Schuler, as principal, J. C. Van Blarcom and D. P. Dyer, as securities, are indebted to the State of Missouri in the sum of twenty-two thousand dollars, for the payment whereof we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated at St. Louis this 2nd day of November, eighteen hundred and eighty-five.

The condition of this obligation is such that whereas Harrison B. Schuler is about to commence a suit by attachment in the circuit court, city of St. Louis, against C. W. Israel and J. N. Israel, trading as C. W. Israel & Co., defendants, returnable to the December term, 1885, thereof, wherein the sum sworn to is eleven thousand dollars and — cents: Now, if the said plaintiff shall prosecute his action without delay and with effect, refund all sums of money that may be adjudged to be refunded to the defendant, or found to have been received by the plaintiff and not justly due to him, and pay all
damages and costs that may accrue to any defendant or any
6 garnishee by reason of the attachment, or any process or proceeding in the suit, or by reason of any judgment or process thereon, then this obligation to be void; otherwise, to remain in full force.

H. B. SCHULER. [SEAL.]
J. C. VAN BLARCOM. [SEAL.]
D. P. DYER. [SEAL.]

Approved this 2nd day of November, 1885.
[SEAL.] CHAS. F. VOGEL,
Clerk Circuit Court.

We acknowledge ourselves bound, jointly and severally, for all costs that have accrued or may accrue in the above-entitled cause of Harrison B. Schuler against C. W. Israel & Co.

Witness our hands and seals, at St. Louis, this 2nd day of November, 1885.

H. B. SCHULER. [SEAL.]
J. C. VAN BLARCOM. [SEAL.]

Approved this 2nd day of Nov., 1885.

CHAS. F. VOGEL,
Clerk Circuit Court.

That on said second day of November, 1885, a writ of attachment was duly issued in said cause, which, with the return of the sheriff thereon, is in words and figures as follows:

Attachment Writ.

CITY OF ST. LOUIS, *ss:*

The State of Missouri to the sheriff of the city of St. Louis, Greeting:

We command you to attach C. W. Israel and J. N. Israel, composing the firm of C. W. Israel & Co., by — all and singular, their lands, tenements, goods, chattels, rights, moneys, credits, evidences of debt, and effects, or so much thereof as shall be sufficient
7 to satisfy the plaintiff's claim, as sworn to, to wit, the sum of ten thousand dollars and — cents, with interest and costs of suit, in whose hands or possession soever the same may be found in your bailiwick, and that you summon the said C. W. Israel and J. N. Israel to appear at the next term of the circuit court, before the judges thereof, on the first day of said term, to be holden at the city of St. Louis on the first Monday of December next, then and there to answer the action of the plaintiff, Harrison B. Schuler, as set forth in the annexed petition, and also that you summon as garnishees all persons in whose hands or possession soever any personal property, rights, credits, evidences of debt, effects, or money of the defendant may be, or who may be named by the plaintiff or his attorney as garnishees, and particularly that they may be and appear before the judges of our circuit court, on the first day of the term aforesaid, then and there to answer unto what may be objected against them; and have you then and there this writ.

Witness Chas. F. Vogel, clerk of our said court, with the seal thereof hereunto affixed, at office in the city of St. Louis, this second day of November, in the year of our Lord eighteen hundred and eighty-five.

[SEAL.] CHAS. F. VOGEL, *Clerk.*

Sheriff's Return.

No goods, chattels, or real estate found in the city of St. Louis belonging to the defendant whereon to levy this writ and make the debt and costs or any part thereof; thereupon, by order of plaintiff's attorney, I executed this writ in said city of St. Louis, at the hour of three o'clock and fifty-eight minutes p. m., on the second day of November, 1885, by declaring in

writing to Laclede Bank, St. Louis, Mo., that I attached
8 in its hands all debts due from it to the defendants and all goods, moneys, effects, rights, credits, chattels, choses in action, and evidences of debt of the defendants, C. W. Israel and J. N. Israel, trading as C. W. Israel & Co. at Henrietta, Texas, as "Exchange Bank" at Harold, Texas, and as "Exchange Bank" at Wichita Falls, Texas, or as much thereof as would be sufficient to satisfy the debt, interest, and costs in this suit, and I at the same time, by said direction, further execute- said writ by summoning said Laclede Bank, St. Louis, Mo., as garnishee by declaring to it in writing that I summoned it to appear at the return term of said writ, to wit, on the first Monday of December next, to answer such interrogatories as might be exhibited to it by said plaintiff, Harrison B. Schuler, and at the same time delivering to James T. Birch, cashier of the said Laclede Bank, St. Louis, Mo., a notice in writing of such garnishment.

St. Louis, Mo., November 2d, 1885.

HENRY F. HARRINGTON, *Sheriff*,
By FRANK J. HAHN, *Deputy*.

And afterwards, to wit, at the April term, 1886, of said circuit court, the following proceedings were had therein, to wit:

Dismissal.

HARRISON B. SCHULER
vs.
LACLEDE BANK, Garnishee of C. W. Israel, *et al.*, Partners, &c. } (99532.)

TUESDAY, *April 6th*, 1886.

Now at this day, this cause coming on for hearing and neither party appearing, it is ordered that this cause be dismissed for
9 want of prosecution at the costs of the plaintiff and that execution issue therefor.

Order of Removal. Bond Approved and Filed.

HARRISON B. SCHULER
vs.
C. W. ISRAEL and J. N. ISRAEL, Composing Firm of C. W. Israel & Co.

MONDAY, *May 17th*, 1886.

On petition of the plaintiff herein this day filed it is ordered by the court that on said plaintiff giving bond in the sum of one hundred dollars, to be approved by the court, that the clerk of this court forthwith certify to the circuit court of the United States for the eastern district of Missouri a full, true, and complete transcript of the record and proceedings of the above-entitled cause as fully as the same remains of record in his office. Bond approved and filed.

Which petition and bond for removal are, respectively, in the words and figures following, to wit:

Petition for Removal.

In the Circuit Court of City of St. Louis.

HARRISON B. SCHULER
vs.
C. W. ISRAEL and J. N. ISRAEL, Trading as C. W. Israel & Co.

Petition for removal by non-resident.

STATE OF MISSOURI, } ss:
City of St. Louis, }

To the honorable the circuit court of city of St. Louis, State of Missouri:

Your petitioner respectfully shows that the matter and amount involved in the above-entitled cause exceeds, exclusive of costs, the sum of five hundred dollars.

10 Your petitioner further show- that the controversy in said suit is between citizens of different States, and that the petitioner was at the time of the commencement of this suit and still is a citizen of the State of Kansas, and that C. W. Israel was then and still is a citizen of the State of Texas, and that J. N. Israel was then and still is a citizen of the State of Texas; and your petitioner offers herewith a bond, with good and sufficient surety, in the penal sum of one hundred dollars, conditioned for his entering in the circuit court of the United States for the eastern district of Missouri, on the first day of its next session, a copy of the record in this suit, and for paying all costs that may be awarded by said circuit court if said court shall hold that this suit was wrongfully or improperly removed thereto.

Your petitioner therefore prays this honorable court to proceed no further herein, except to make the order of removal required by law, and to accept the said surety and bond, and to cause the record herein to be removed into said circuit court of the United States within and for the eastern district of Missouri, according to the statute in such case made and provided; and your petitioner will ever pray, &c.

HARRISON B. SCHULER,
By DYER, LEE & ELLIS, *Att'ys.*

DYER, LEE & ELLIS,
Attorneys for Petitioner.

STATE OF MISSOURI, } ss:
City of St. Louis, }

D. P. Dyer, being duly sworn, on oath deposes and says that he is att'y for the within petitioner in the above-entitled cause; that he has read the foregoing petition and knows the contents

11 thereof, and that the matters and things therein stated are true, as he verily believes.

D. P. DYER.

Subscribed and sworn to by said D. P. Dyer this 17th day of May, 1886, before me.

CHAS. F. VOGEL, *Clerk.*

Bond for Removal.

Know all men by these presents that we, Harrison B. Schuler, as principal, and D. P. Dyer, of city of St. Louis and State of Missouri, as surety, are held and firmly bound unto C. W. Israel and J. N. Israel in the penal sum of one hundred dollars, lawful money of the United States; for the payment of which, well and truly to be made, we bind ourselves and our heirs, executors, or administrators, jointly and severally and firmly by these presents.

Whereas Harrison B. Schuler, principal above named, has petitioned the circuit court, city of St. Louis, in the State of Missouri, for the removal of a certain suit therein pending, wherein Harrison B. Schuler is plaintiff and the said C. W. Israel and J. N. Israel are defendants, into the circuit court of the United States for the eastern district of Missouri, now, therefore, the condition of this obligation is such that if the above-bounden Harrison B. Schuler shall enter and file, or cause to be entered and filed, in the next circuit court of the United States in and for the eastern district of Missouri, on the first day of its next session, copies of all process, pleadings, depositions, testimony, and other proceedings in a certain suit or action now pending in the said circuit court, city of St. Louis and State of Missouri, in which Harrison B. Schuler is plaintiff
12 and C. W. Israel and J. N. Israel *is* defendants, and shall pay all costs that may be awarded by said circuit court if said circuit court shall hold that said cause was wrongfully or improperly removed thereto, and shall also appear in said circuit court and enter special bail in such cause if special bail was originally required therein, and shall do such other appropriate acts as by the act of Congress in that behalf are required to be done upon the removal of such suit from said State court into the United States court, then this obligation to be void; otherwise of force.

Witness our hands and seals this 15th day of May, 1886.

HARRISON B. SCHULER, [SEAL.]
By DYER, LEE & ELLIS, *Att'ys.*
D. P. DYER. [SEAL.]

Approved in open court.
May 17, 1886. CHAS. F. VOGEL, *Clerk.*

STATE OF MISSOURI, }
City of St. Louis, } ss:

I, Charles F. Vogel, clerk of the circuit court, city of St. Louis, do hereby certify the foregoing to be a true, full, and complete transcript of the record and proceedings in the cause of Harrison B. Schuler against C. W. Israel and J. N. Israel, composing firm of C. W. Israel & Co., as well as the garnishment proceedings in case of said Harrison B. Schuler *vs.* Laclede Bank, as fully as the same remain on file and of record in my office.

In testimony whereof I hereunto set my hand and affix the
13 seal of said court, at office in the city of St. Louis, this 17th day of May, 1886.

[SEAL.] CHAS. F. VOGEL, *Clerk.*

Said transcript in case No. 2658 is in words and figures following, to wit:

Transcript in Case No. 2658.

STATE OF MISSOURI, } ss:
City of St. Louis, }

Be it remembered that heretofore, to wit, on the second day of November, A. D. 1885, there was filed in the office of the clerk of the circuit court, city of St. Louis, a petition and affidavit for attachment, which is in the words and figures following, to wit:

Petition.

In the Circuit Court. To the December Term, 1885.

HARRISON B. SCHULER, Plaintiff,

vs.

C. W. ISRAEL and J. N. ISRAEL, Defendants.

STATE OF MISSOURI, *City of St. Louis:*

Plaintiff states that he is a citizen of the State of Kansas, residing at the city of Winfield, in that State; that the defendants are citizens of the State of Texas, residing at Henrietta, in that State.

Plaintiff further states that the defendants are now, and were at all of the times hereinafter stated, copartners in business, and engaged in the business of banking at Hamilton Texas, Harold, Texas, and Wichita Falls, Texas; that the defendants are and were copartners as aforesaid, and doing business as aforesaid at Henrietta, Texas, under the firm name and style of "C. W. Israel & Co.;" that
14 they were doing business at Harold, Texas, under the firm name and style of "Exchange Bank" and at Wichita Falls, Texas, under the firm name and style of "Exchange Bank."

Plaintiff, for a cause of action against the said defendants, state that on the 20th day of October, A. D. 1885, the said defendants, by the firm name of C. W. Israel & Co., for value received of plaintiff, drew their certain draft No. 9950, at Henrietta, Texas, in favor of the plaintiff for the sum of eleven thousand two hundred and fifty dollars, on the Laclede Bank (a corporation organized under the laws of the State of Missouri and doing a general banking business at the city of St. Louis, in said State), by which they requested and directed the said Laclede Bank to pay to the plaintiff, or order, the said sum of eleven thousand two hundred and fifty dollars, which said draft is herewith filed.

Plaintiff further states that he caused said draft to be duly presented to said Laclede Bank for payment October 26th, A. D. 1885, during banking hours, and payment was by said bank refused.

Whereupon plaintiff caused said draft to be duly protested for non-payment.

Plaintiff states that no part of said draft has been paid, but that the full amount thereof is due and unpaid. Wherefore plaintiff says that, the premises considered, he is entitled to have and recover of said defendants the said sum of eleven thousand two hundred and fifty dollars, with interest thereon, and damages for non-payment, as by law allowed; for all which plaintiff sues and prays judgment.

DYER, LEE & ELLIS,
Att'ys for Pl'ff.

Affidavit.

STATE OF MISSOURI, *City of St. Louis*.

15 Harrison B. Schuler, the plaintiff in the above-entitled cause, on oath states that he has a just demand against the above-named defendants, now due, and that the amount which he ought to recover, after allowing all just credits and set-offs, is eleven thousand two hundred and fifty dollars ($11,250.00), and that he has good reason to believe and does believe that the defendants are not residents of the State of Missouri.

H. B. SCHULER.

Subscribed and sworn to before me this November 2nd, 1885.
[SEAL.] CHAS. F. VOGEL, *Clerk.*

Thereupon a bond for attachment was filed in said cause, which is in the words and figures following, to wit:

Attachment Bond.

Know all men by these presents that we, Harrison B. Schuler, as principal, and James A. Gregory and Wesley Austin, as securities, are indebted to the State of Missouri in the sum of twenty-two thousand five hundred dollars; for the payment whereof we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated at St. Louis this second day of November, eighteen hundred and eighty-five.

The condition of this obligation is such that whereas Harrison B. Schuler is about to commence a suit by attachment in the circuit court, city of St. Louis, against C. W. Israel and J. N. Israel, composing [the] firm of C. W. Israel & Co., defendants, returnable to the December term, 1885, thereof, wherein the sum sworn to is eleven thousand two hundred and fifty dollars and —— cents:

Now, if the said plaintiff shall prosecute his action without delay and with effect, refund all sums of money that may be adjudged
16 to be refunded to the defendant or found to have been received by the plaintiff and not justly due to him, and pay all damages and costs that may accrue to any defendant or any garnishee, by reason of the attachment or any process or proceed-

ings in the suit, or by reason of any judgment or process thereon, then this obligation to be void; otherwise to remain in full force.

HARRISON B. SCHULER. [SEAL.]
JAMES A. GREGORY. [SEAL.]
WESLEY AUSTIN. [SEAL.]

Approved this 2nd day of Nov., 1885.

[SEAL.] CHAS. F. VOGEL,
Clerk Circuit Court.

We acknowledge ourselves bound, jointly and severally, for all costs that have accrued or may accrue in the above-entitled cause of Harrison B. Schuler against C. W. Israel *et al.*

Witness our hands and seals, at St. Louis, this 2nd day of November, 1885.

HARRISON B. SCHULER. [SEAL.]
JAMES A. GREGORY. [SEAL.]
WESLEY AUSTIN. [SEAL.]

Approved this 2nd day of November, 1885.

CHAS. F. VOGEL,
Clerk Circuit Court.

Whereupon a writ of attachment was duly issued in said cause, which, together with the sheriff's return thereon, is in words and figures following, to wit:

Writ of Attachment.

THE CITY OF ST. LOUIS, *ss:*

The State of Missouri to the sheriff of the city of St. Louis, Greeting:

17 We command you to attach C. W. Israel and J. N. Israel, by all and singular their lands, tenements, goods, chattels, rights, moneys, credits, evidences of debts, and effects, or so much thereof as shall be sufficient to satisfy the plaintiff's claim as sworn to, to wit, the sum of eleven thousand two hundred and fifty dollars and — cents, with interest and costs of suit, in whose hands or possession soever the same may be found in your bailiwick, and that you summon the said C. W. Israel and J. N. Israel to appear at the next term of the circuit court before the judges thereof on the first day of said term to be holden at the city of St. Louis on the first Monday of December next, then and there to answer the action of the plaintiff, Harrison B. Schuler, as set forth in the annexed petition; and also that you summon as garnishees all persons in whose hands or possession soever any personal property, rights, credits, evidences of debt, effects, or money of the defendant may be, or who may be named by the plaintiff or his attorney as garnishees, and particularly that they be and appear before the judges of our said court, on the first day of the term aforesaid, then and there to answer unto what may be objected against them; and have you then and there this writ.

Witness Charles F. Vogel, clerk of our said court, with the seal thereof hereunto affixed, at office, in the city of St. Louis, this sec-

ond day of November, in the year of our Lord eighteen hundred and eighty-five.

[SEAL.] CHAS. F. VOGEL, *Clerk.*

Sheriff's Return.

18 No goods, chattels, or real estate found in the city of St. Louis belonging to the defendants whereon to levy this writ and make the debt and costs or any part thereof; thereupon, by order of plaintiff's attorney, I executed this writ, in said city of St. Louis, at the hour of nine o'clock and five minutes a. m., on the second day of November, 1885, by declaring, in writing, to Laclede Bank, St. Louis, Mo., that I attached in its hands all debts due from it to the defendants and all goods, moneys, effects, rights, credits, chattels, choses in action, and evidences of debt of the defendants, C. W. Israel and J. N. Israel, trading as C. W. Israel & Co., at Henrietta, Texas; as Exchange Bank, at Harold, Texas; as Exchange Bank, at Wichita Falls, Texas, or as much thereof as would be sufficient to satisfy the debt, interest and costs, in this suit. And I at the same time, by said direction, further executed said writ by summoning said Laclede Bank, as garnishee, by declaring to it, in writing, that I summoned it to appear at the return term of said writ, to wit, on the first Monday of December next, to answer such interrogatories as might be exhibited to it by said plaintiff, Harrison B. Schuler, and at the same time delivering to James T. Birch, cashier of the said Laclede Bank, St. Louis, Mo., a notice in writing of such garnishment.

St. Louis, Mo., November 2nd, 1885.

HENRY F. HARRINGTON, *Sheriff.*

Afterwards, to wit, at the December term, 1885, of said circuit court, the following proceedings were had in said cause, to wit:

Order of Publication.

HARRISON B. SCHULER
vs.
C. W. ISRAEL and J. N. ISRAEL. } 69255.

WEDNESDAY, *January 20th*, 1886.

19 Now at this day comes the plaintiff, by his attorney, and it appearing from the petition heretofore filed herein that the defendants are not residents of the State of Missouri, wherefore, on motion of said plaintiff, by attorney, it is ordered that the defendants be notified that a civil action has been commenced against them for the sum of $11,250.00 on account of a draft, No. 9950, drawn by defendants, by the firm name of C. W. Israel & Co., at Henrietta, Texas, in favor of the plaintiff for the sum of $11,250.00 on the Laclede Bank, doing business at the city of St. Louis, State of Missouri, and that their property has been attached, and unless they appear at the term of this court to be begun and held at the city of St. Louis on the first Monday of April next, and on or before

the third day thereof answer to the action aforesaid according to law, judgment will be rendered against them and their property sold to satisfy the same. And it is further ordered that a copy hereof be published according to law in the Missouri Republican, a newspaper printed and published in the city of St. Louis.

Afterwards, to wit, at the February term, 1886, of said court, the following proceedings were had herein, to wit:

Continuance Cause Not Triable.

HARRISON B. SCHULER
vs.
C. W. ISRAEL *et al.* } 69255.

MONDAY, *March 22nd*, 1886.

Continued. Cause not triable.

Afterwards, to wit, at the April term, 1886, of said court, the following proceedings were had therein, to wit:

20 *Dismissal of Garnishment Set Aside and 10 Days' Time Given to File Interrogatories.*

HARRISON B. SCHULER
vs.
LACLEDE BANK, St. Louis, Mo., Garnishee. } 69,530.

MONDAY, *April 26th*, 1886.

On motion of plaintiff, by attorney, it is ordered by the court that the dismissal herein be set aside, and ten days' time is given plaintiff to file interrogatories.

HARRISON B. SCHULER
vs.
C. W. ISRAEL and J. N. ISRAEL.

MONDAY, *May* 17, 1886.

Now at this day comes the plaintiff, by his attorney, and presents to the court his petition for the removal of this cause to the circuit court of the United States for the eastern district of Missouri, and also presents to the court a bond conditioned according to law in the penal sum of one hundred dollars, and the court being fully advised in the premises doth order that said bond be approved and the prayer of said petition be granted; thereupon it is ordered by the court that the clerk of this court forthwith certify to the circuit court of the United States for the eastern district of Missouri a full, true, and complete transcript of the record and proceedings in the above-entitled cause as fully as the same remains of record in his office.

Which petition and bond for removal are respectively in the words and figures following, to wit:

Petition for Removal.

STATE OF MISSOURI, } ss:
City of St. Louis, }

21 In the Circuit Court of City of St. Louis.

HARRISON B. SCHULER
vs.
C. W. ISRAEL and J. N. ISRAEL, Trading as C. W. Israel & Co.

Petition for removal by non-resident.

To the honorable the circuit court of city of St. Louis, State of Missouri:

Your petitioner respectfully shows that the matter and amount involved in the above-entitled cause exceeds, exclusive of costs, the sum or value of five hundred dollars.

Your petitioner further shows that the controversy in said suit is between citizens of different States, and that the petitioner was at the time of the commencement of this suit and still is a citizen of the State of Kansas, and that C. W. Israel was then and still is a citizen of the State of Texas, and that J. N. Israel was then and still is a citizen of the State of Texas.

And your petitioner offers herewith a bond, with good and sufficient surety, in the penal sum of one hundred dollars, conditioned for his entering in the circuit court of the United States for the eastern district of Missouri, on the first day of its next session, a copy of the record in this suit, and for paying all costs that may be awarded by said circuit court if said court shall hold that this suit was wrongfully or improperly removed thereto.

Your petitioner therefore prays this honorable court to proceed no further herein, except to make the order of removal required by law, and to accept the said surety and bond and to cause the record herein to be removed into said circuit court of the United
22 States within and for the eastern district of Missouri according to the statute in such case made and provided.

And your petitioner will ever pray, &c.

HARRISON B. SCHULER,
By DYER, LEE & ELLIS, *Att'ys.*

DYER, LEE & ELLIS,
Attorneys for Petitioner.

STATE OF MISSOURI, } ss:
City of St. Louis, }

D. P. Dyer, being duly sworn, on oath deposes and says that he is attorney for the within petitioner in the above-entitled cause; that he has read the foregoing petition and knows the contents thereof, and that the matters and things therein stated are true as he verily believes.

D. P. DYER.

Subscribed and sworn to by said D. P. Dyer this 17th day of May, 1886, before me—

CHAS. F. VOGEL, *Clerk.*

Bond for Removal.

Know all men by these presents that we, Harrison B. Schuler, as principal, and D. P. Dyer, of city of St. Louis and State of Missouri, as surety, are held and firmly bound unto C. W. Israel and J. N. Israel in the penal sum of one hundred dollars, lawful money of the United States; for the payment of which, well and truly to be made, we bind ourselves and our heirs, executors, or administrators, jointly and severally, *and* firmly by these presents.

Whereas Harrison B. Schuler, principal above named, has
23 petitioned the circuit court of city of St. Louis, in the State of Missouri, for the removal of a certain suit therein pending, wherein Harrison B. Schuler is plaintiff, and the said C. W. Israel and J. N. Israel are defendants, into the circuit court of the United States for the eastern district of Missouri:

Now, therefore, the condition of this obligation is such that if the above-bounden Harrison B. Schuler shall enter and file or cause to be entered and filed in the next circuit court of the United States in and for the eastern district of Missouri, on the first day of its next session, copies of all process, pleadings, depositions, testimony, and other proceedings in a certain suit or action now pending in the said circuit court of city of St. Louis and State of Missouri, in which Harrison B. Schuler is plaintiff and C. W. Israel and J. N. Israel *is* defendants, and shall pay all costs that may be awarded by said circuit court if said circuit court shall hold that said cause was wrongfully or improperly removed thereto, and shall also appear in said circuit court and enter special bail in such cause, if special bail was originally required therein, and shall do such other appropriate acts as by the act of Congress in that behalf are required to be done upon the removal of such suit from said State court into the United States court, then this obligation to be void; otherwise, of force.

Witness our hands and seals this 17th day of May, 1886.

HARRISON B. SCHULER, [SEAL.]
By DYER, LEE & ELLIS, *Att'ys.*
D. P. DYER. [SEAL.]

Approved in open court May 17, '86.

CHAS. F. VOGEL, *Clerk.*

24 STATE OF MISSOURI, } ss:
City of St. Louis, }

I, Charles F. Vogel, clerk of the circuit court, city of St. Louis, do hereby certify the foregoing to be a true, full, and complete transcript of the record and proceedings in the cause of Harrison B. Schuler against C. W. Israel and J. N. Israel, as well as the garnishment proceedings in the case of said Harrison B. Schuler *vs.* Laclede Bank, as fully as the same remain on file and of record in my office.

In testimony whereof I hereunto set my hand and affix the seal of said court, at office in the city of St. Louis, this 17th day of May, 1886.

[SEAL.] CHARLES F. VOGEL, *Clerk.*

And afterwards, to wit, on said 17th day of May, A. D. 1886, the following further proceedings were had and appear of record in said cause, to wit:

Cases Consolidated. Interrogatories Filed. Answers Filed.

HARRISON B. SCHULER
vs.
C. W. ISRAEL and J. N. ISRAEL. } 2657 & 2658.

Consolidated.

By consent it is ordered that cases numbered 2657 and 2658 of Harrison B. Schuler *vs.* C. W. Israel and J. N. Israel be, and they are, consolidated.

And thereupon plaintiff files interrogatories to the Laclede Bank, garnishee, to which garnishee files answer.

Now also comes defendant, J. N. Israel, and files his answer to the petitions in the consolidated cause.

Said interrogatories to Laclede Bank are in words and figures following, to wit:

25 *Interrogatories to Laclede Bank, Garnishee.*

UNITED STATES OF AMERICA, *Eastern District of Missouri:*

In the Circuit Court of the United States for said District.

H. B. SCHULER, Plaintiff,
vs.
C. W. ISRAEL *et al.*, Defendants, } Action on note.
and
LACLEDE BANK, Garnishee.

H. B. SCHULER, Plaintiff,
vs.
C. W. ISRAEL *et al.*, Defendants, } Action on check.
and
LACLEDE BANK, Garnishee.

Now, here, at this day comes the plaintiff in the above-entitled causes (consolidated by order of the court) and exhibits the following interrogatories to the said Laclede Bank, garnishee:

1. At the time of the service of the garnishment had you in your possession, custody, or charge, any lands, tenements, goods, chattels, moneys, credits, or effects, belonging to the defendants in said cases, or either of them?

2. At the time of said garnishment were you indebted to said de-

fendants, or are you now indebted to them or either of them, in any sum whatever?

3. At the time of said garnishment were you then bound in any contract to pay to said defendants, or either of them, any money then due or which has become due since said garnishment?

26 4. If you answer yea to any or all of the above interrogatories, please state fully the amount of such indebtedness and the nature and kind of said property then or now in your possession or under your control belonging to said defendants or either of them.

DYER, LEE & ELLIS,
Attorneys for Plaintiff.

(Endorsed:) Consent is given to the filing of the within interrogatories in consolidated cases Nos. 2657 and 2658.
May 17, 1886.

BOYLE, ADAMS & McKEIGHAN,
Att'ys for Garnishee, Laclede Bank.

Said answer of Laclede Bank, garnishee, is in words and figures following, to wit:

Answer of Laclede Bank, Garnishee.

H. B. SCHULER, Plaintiff,
vs.
J. N. ISRAEL *et al.*, Defendants,
and
LACLEDE BANK, Garnishee.
} Action on note.

H. B. SCHULER, Plaintiff,
vs.
J. N. ISRAEL *et al.*, Defendants,
and
LACLEDE BANK, Garnishee.
} Action on check.

Now comes the said Laclede Bank, garnishee in the two above consolidated causes, and, for answer to the interrogatories filed therein, says:

1st. That at the time of the service of the summons of garnishment on it in said cases, viz., November 2nd, 1885, nor

27 has it since, or has it now, in its possession, custody, or charge any lands, tenements, goods, chattels, moneys, credits, or effects belonging to the defendants in said cases or either of them.

2nd. At said date of garnishment it, the said bank, was not indebted in anywise to said defendants or either of them, nor has it since become so indebted, nor is it now so indebted.

3rd. At said date of garnishment said bank was not bound in any contract to pay said defendants, or either of them, any money not then due, nor has it since said date become so indebted.

Said garnishee bank, further answering said interrogatories, and as part of its aforesaid general answer to said interrogatories, and as

furnishing the ground thereof, states that the time of the commencement of said suits, and for a long time before, the said plaintiff was a resident and citizen of the State of Kansas; that on and for a long before the 24th of October, 1885, one J. N. Israel, a citizen of Texas, residing at Henrietta, in the county of Clay, in said State, was engaged at the said city of Henrietta in a general banking business under the name of C. W. Israel & Company, being the same banking concern heretofore referred to, and also was engaged in a like business at Harold, in said State, under the name and style of Exchange Bank of Harold, and also engaged in a like business at Wichita Falls, in said State, under the name and style of Exchange Bank of Wichita Falls; that on said 24th of October, 1885, the said J. N. Israel had to his credit under the said name of C. W. Israel & Company the sum of $5,912.41, and to his said credit under the name and style of Exchange Bank of Wichita Falls the sum of
28 $10,013.15, and to his credit under the name of Exchange Bank of Harold $1,927.53, which said amounts stood formally on the books of this garnishee in said manner on the said 26th day of October, 1885. This garnishee, however, avers the truth to be that said amounts were kept separate and distinct on its books, and checks drawn by said J. N. Israel were always drawn against said accounts as though they were owned by separate individuals.

That on, to wit, August 24th, 1885, said J. N. Israel, under the said name and style of C. W. Israel & Company, made, executed, and delivered to this garnishee his certain promissory note in writing of that date by which he promised to pay, ninety days after date, to the order of this garnishee, the sum of $2,500.00, which said note, at or near said date, was delivered to this garnishee, and, at the request of said C. W. Israel & Company, discounted at the usual bankable rates of eight per cent., and the proceeds passed to the credit, on the books of this garnishee, of said C. W. Israel & Company. Said note is in words and figures as follows:

"$2,500.00. ST. LOUIS, MISSOURI, *Aug.* 24 1885.

"Ninety days after date we promise to pay to the order of the Laclede Bank twenty-five hundred dollars, for value received, negotiable and payable without defalcation or discount at the Laclede Bank, St. Louis, Missouri, with interest at the rate of ten per cent. per annum after maturity, having deposited in said bank as collateral security for this and other loans one promissory note dated Henrietta, Texas, September 18th, 1884, due twenty-four months after date, for $2,413.10 and 10 per cent. interest from date, signed S. S. Maddox, John W. Maddox, and F. M. Maddox, and one
29 dated Henrietta, Texas, June 1st, 1885, due six months after date, for $1,275, and signed by W. C. Black and W. B. Blimons, and secured by a deed of trust on sheep and 641 acres of land, which we hereby authorize said bank or its president or cashier to sell without notice, at the Merchants' Exchange in the city of St. Louis, or at public or private sale, at the option of said bank or of its president or cashier, in case of the non-performance of this promise, applying the proceeds to the payment of notes or evidences of debt

held by said bank, including interest, and accounting to us for the surplus, if any. In case of deficiency we promise to pay for the said bank the amount thereof forthwith after such sale, with interest as above specified. The present cash market value of the above collateral security is thirty-seven hundred dollars, and it is understood and agreed, should there be any depreciation in the value of said security prior to the maturity of any note or claim held by said bank, such an amount of additional security will be furnished by us as will be satisfactory to said Laclede Bank, and should such additional security not be furnished within twenty-four hours after demand on us so to do, then and in that event said bank may proceed at once to sell, as above specified, the security herein named.

"(Signed) C. W. ISRAEL & COMPANY."

This garnishee, further answering said interrogatories, charges the truth to be that on, to wit, September, 9th, 1885, the said J. N. Israel, under his said name and style of C. W. Israel & Company, made, executed, and delivered to this garnishee, on or about said date, his certain other promissory note, by which he promised to pay, ninety days after date, for value received, to this garnishee, the sum of $8,000, which said note was received by this garnishee at or near said date, and, at the request of said C. W. Israel & Company, discounted at the usual bankable rate of eight per cent., and the proceeds thereof were passed to the credit of said C. W. Israel & Company on the books of this garnishee. Said note is in words and figures as follows, to wit:

"$8,000. ST. LOUIS, MISSOURI, *Sept. 9th*, 1885.

"Ninety days after date we promise to pay to the order of the Laclede Bank eight thousand dollars for value received, negotiable and payable, without defalcation or discount, at the Laclede Bank, St. Louis, Missouri, with interest at the rate of ten per cent. per annum after maturity. Having deposited in said *book* as collateral security for this and other loans one promissory note, dated Henrietta, Texas, May 20th, due six months after date at Henrietta, Texas, for $10,000.60, with 12 per cent. interest after maturity, signed by J. L. Huggins and secured by two deeds of trust, one on 1,535 acres of land in Clay county, Texas, and one on 2,000 head of cattle and 45 head of horses, located in Clay county, Texas, and branded H & —, which we hereby authorize said bank or its president or cashier to sell, without notice, at the Merchants' Exchange, in the city of St. Louis, or at public or private sale, at the option of said bank or of its president or cashier, in case of the non-performance of this promise, applying the proceeds to the payment of notes or evidences of debt held by said bank, including interest, and accounting to us for the surplus, if any. In case of deficiency we promise to pay to the said bank the amount thereof forthwith, after such sale, with interest as above specified. The present cash market value of the above collateral security is ten thousand dollars, and it is understood and agreed, should there be any deficiency in the value of said security prior to the maturity of

any note or claim held by said bank, such an amount of additional security shall be furnished by us as will be satisfactory to said Laclede Bank; and should such additional security not be furnished within twenty-four hours after demand on us so to do then, and in that event, said bank may proceed at once to sell as above specified the security herein named.

"(Signed) C. W. ISRAEL & COMPANY."

This garnishee states that there has been paid on account of said collateral notes the sum of $1,100 and no more, although this garnishee has used due diligence to collect the same as they fell due.

This garnishee avers that at the time of the execution and delivery of said notes to it by said C. W. Israel & Company and of the discounting of the same there were delivered to it as collateral security therefor notes of certain residents and citizens of the State of Texas, as set forth in said notes, secured in some instances by deeds of trust on lands in the State of Texas; but this garnishee avers that while said collateral security was taken the said notes were discounted by it on the faith and credit given by it to said J. N. Israel, doing business as aforesaid, as said Israel had under said name and style been a depositor with it for a great many years and had during a greater part of the time large sums of money to his credit on his said accounts, and having during said time given many notes and paid them promptly, this garnishee, having no information at the time as to the value of said notes referred to, or of the persons who executed them, and taken by it as security, but took the same more to comply with formal banking principles than be-
32 cause of any credit given to said collateral; and this garnishee states that said collateral notes are and were at the date of said assessment of no value, except as to what has been collected. Said J. N. Israel, at the time said notes were negotiated with it, had to his credit on the account of C. W. Israel & Company, on the 24th of August, 1885, the sum of $3,363.42, and to the credit of the account of the Exchange Bank of Harold the sum of $521.77, and to the credit of the account of — Exchange Bank of Wichita Falls the sum of $5,991.26, and on said September 9th, 1885, had to the credit of the account of said C. W. Israel & Company the sum of $5,076.20, and to the credit of the account of Exchange Bank of Harold the sum of $2,167.47, and to the credit of the account of the Exchange Bank of Wichita Falls the sum of $6,328.37.

This garnishee avers that at the date of said assignment, and ever since, said J. N. Israel has been and is now wholly insolvent and unable to pay the said notes held by this garnishee, unless the same are charged against said funds.

This garnishee, further answering said bill of complaint, avers that on, to wit, the 24th of October, 1885, the said J. N. Israel, being wholly insolvent, made, executed, and delivered a general deed of assignment under and in conformity with the laws of the State of Texas with respect to such conveyances, which was duly acknowledged, certified, and recorded in the office of the clerk of the county

court of said Clay county on said 24th of October, 1885, at one o'clock P. M. of that day, which said instrument conveyed to one S. Davidson, a citizen of Texas and a resident of said Clay county, all the property and assets of every kind and description of said Israel, wherever situate, for the benefit of his, the said Israel's, cred-
33 itors, which said conveyance was and is in words and figures as follows:

STATE OF TEXAS, }
County of Clay, } ss:

"Know all men by these presents, that whereas we, C. W. Israel & Company, a firm composed of J. N. Israel, who resides in Clay county, Texas, doing and carrying on a general banking and exchange business in Henrietta, Clay county, Texas, and Wichita Falls, Wichita county, Texas, and at Harold, Wilbarger county, Texas, said business at Henrietta being carried on under the firm name and style of C. W. Israel & Company, and said business being carried on at Wichita Falls under the firm name and style of Exchange Bank of Wichita Falls, and said business being carried on at Harold under the firm name and style of Exchange Bank of Harold; and being indebted to various and divers persons and firms, as is shown by inventory and list to be attached to this deed of assignment and marked Exhibit A and made a part hereof, said inventory and list containing and to contain a full and true list and account of all creditors of said firm, the place of residence of such creditors, and the nature of each debt or demand, whether arising on written security, evidence, or otherwise executed upon open account, the true cause and consideration of such indebtedness in each case, and the place where such indebtedness arose, a statement of any existing mortgage, collateral judgment, or other security for the payment of any such debt which the said C. W. Israel & Company *or* unable to pay; and whereas they are anxious of disposing of the entire estate of the said C. W. Israel & Company and of the said J. N. Israel, save and except only such property as is exempt from execution, and is not subject to forced sale under the laws of the State of Texas, and all of the assets for the benefit of their said creditors as is mentioned in said
34 inventory hereinafter mentioned. Therefore we have this day, in consideration of the sum of one dollar cash in hand paid to me by S. Davidson, who resides in the county of Clay and State of Texas, the receipt of which is hereby acknowledged, and for the uses and purposes and trusts hereafter mentioned, have bargained, sold, assigned, transferred, and conveyed, and do by these presents bargain, sell, assign, transfer, and convey, all of the property, both real and personal, belonging to the said C. W. Israel & Company and to the said J. N. Israel, said property consisting of all property now owned by the said C. W. Israel & Company or by the said J. N. Israel in each of the aforesaid banks in Henrietta, Clay county, Texas, and Wichita Falls, Wichita county, Texas, and Harold, Wilbarger county, Texas, and all evidences of indebtedness, judgments, choses in action, books, accounts, bank furniture

any note or claim held by said bank, such an amount of additional security shall be furnished by us as will be satisfactory to said Laclede Bank; and should such additional security not be furnished within twenty-four hours after demand on us so to do then, and in that event, said bank may proceed at once to sell as above specified the security herein named.

"(Signed) C. W. ISRAEL & COMPANY."

This garnishee states that there has been paid on account of said collateral notes the sum of $1,100 and no more, although this garnishee has used due diligence to collect the same as they fell due.

This garnishee avers that at the time of the execution and delivery of said notes to it by said C. W. Israel & Company and of the discounting of the same there were delivered to it as collateral security therefor notes of certain residents and citizens of the State of Texas, as set forth in said notes, secured in some instances by deeds of trust on lands in the State of Texas; but this garnishee avers that while said collateral security was taken the said notes were discounted by it on the faith and credit given by it to said J. N. Israel, doing business as aforesaid, as said Israel had under said name and style been a depositor with it for a great many years and had during a greater part of the time large sums of money to his credit on his said accounts, and having during said time given many notes and paid them promptly, this garnishee, having no information at the time as to the value of said notes referred to, or of the persons who executed them, and taken by it as security, but took the same more to comply with formal banking principles than be-
32 cause of any credit given to said collateral; and this garnishee states that said collateral notes are and were at the date of said assessment of no value, except as to what has been collected. Said J. N. Israel, at the time said notes were negotiated with it, had to his credit on the account of C. W. Israel & Company, on the 24th of August, 1885, the sum of $3,363.42, and to the credit of the account of the Exchange Bank of Harold the sum of $521.77, and to the credit of the account of — Exchange Bank of Wichita Falls the sum of $5,991.26, and on said September 9th, 1885, had to the credit of the account of said C. W. Israel & Company the sum of $5,076.20, and to the credit of the account of Exchange Bank of Harold the sum of $2,167.47, and to the credit of the account of the Exchange Bank of Wichita Falls the sum of $6,328.37.

This garnishee avers that at the date of said assignment, and ever since, said J. N. Israel has been and is now wholly insolvent and unable to pay the said notes held by this garnishee, unless the same are charged against said funds.

This garnishee, further answering said bill of complaint, avers that on, to wit, the 24th of October, 1885, the said J. N. Israel, being wholly insolvent, made, executed, and delivered a general deed of assignment under and in conformity with the laws of the State of Texas with respect to such conveyances, which was duly acknowledged, certified, and recorded in the office of the clerk of the county

court of said Clay county on said 24th of October, 1885, at one o'clock P. M. of that day, which said instrument conveyed to one S. Davidson, a citizen of Texas and a resident of said Clay county, all the property and assets of every kind and description of said Israel, wherever situate, for the benefit of his, the said Israel's, cred-
33 itors, which said conveyance was and is in words and figures as follows:

STATE OF TEXAS, }
County of Clay, } ss:

"Know all men by these presents, that whereas we, C. W. Israel & Company, a firm composed of J. N. Israel, who resides in Clay county, Texas, doing and carrying on a general banking and exchange business in Henrietta, Clay county, Texas, and Wichita Falls, Wichita county, Texas, and at Harold, Wilbarger county, Texas, said business at Henrietta being carried on under the firm name and style of C. W. Israel & Company, and said business being carried on at Wichita Falls under the firm name and style of Exchange Bank of Wichita Falls, and said business being carried on at Harold under the firm name and style of Exchange Bank of Harold; and being indebted to various and divers persons and firms, as is shown by inventory and list to be attached to this deed of assignment and marked Exhibit A and made a part hereof, said inventory and list containing and to contain a full and true list and account of all creditors of said firm, the place of residence of such creditors, and the nature of each debt or demand, whether arising on written security, evidence, or otherwise executed upon open account, the true cause and consideration of such indebtedness in each case, and the place where such indebtedness arose, a statement of any existing mortgage, collateral judgment, or other security for the payment of any such debt which the said C. W. Israel & Company *or* unable to pay; and whereas they are anxious of disposing of the entire estate of the said C. W. Israel & Company and of the said J. N. Israel, save and except only such property as is exempt from execution, and is not subject to forced sale under the laws of the State of Texas, and all of the assets for the benefit of their said creditors as is mentioned in said
34 inventory hereinafter mentioned. Therefore we have this day, in consideration of the sum of one dollar cash in hand paid to me by S. Davidson, who resides in the county of Clay and State of Texas, the receipt of which is hereby acknowledged, and for the uses and purposes and trusts hereafter mentioned, have bargained, sold, assigned, transferred, and conveyed, and do by these presents bargain, sell, assign, transfer, and convey, all of the property, both real and personal, belonging to the said C. W. Israel & Company and to the said J. N. Israel, said property consisting of all property now owned by the said C. W. Israel & Company or by the said J. N. Israel in each of the aforesaid banks in Henrietta, Clay county, Texas, and Wichita Falls, Wichita county, Texas, and Harold, Wilbarger county, Texas, and all evidences of indebtedness, judgments, choses in action, books, accounts, bank furniture

and fixtures, safes, vaults, and also any and all real estate situated in the State of Texas and now owned by the said C. W. Israel & Company or the said J. N. Israel, it being hereby intended to include any and all property of any and every description whatever belonging to the said C. W. Israel & Company or J. N. Israel (whether the same belonged to the said firm of C. W. Israel & Company or J. N. Israel) now owned by said firm of C. W. Israel & Company or J. N. Israel, save and except such property as is by the laws of the State of Texas exempt from forced sale, and it is not intended by this deed to convey any such exempt property. It is understood, however, that the property herein conveyed is conveyed in trust for the benefit of the creditors of the said C. W. Israel & Company and said J. N. Israel. Said assignee shall forthwith take possession of the property and effects and demands and accounts hereby
35 assigned and intended to be assigned, and with all reasonable diligence dispose of said property herein conveyed by public or private sale for the best price that can be obtained and convert the same into money, and shall, as soon as possible, collect all the debts, accounts, and demands owing to the said C. W. Israel & Company and to J. N. Israel as soon as the same can be collected, and may employ for the purpose of effecting such sales and collecting such debts all such assistance as may be necessary in the premises, exercising every other power and precaution that may be needful in the preservation of such goods and property and for the carrying out of this trust, and he shall also, as soon as possible, sell, convey, and make good titles to said property to the purchaser or purchasers thereof, said sale or sales to be made at either public or private sales, as may be for the best interest of said above-named creditors, and the said S. Davidson shall appropriate and pay out the proceeds of any sale so made and received by him and of all moneys so collected by him on all debts herein conveyed to him as follows, to wit:

"To all of the creditors of the firm of C. W. Israel & Company, said firm being composed of J. N. Israel, as above set out, and to any other creditors of said C. W. Israel & Company not now known of, and to the payment of all costs that may accrue in carrying out this trust. The said S. Davidson is to take possession of said property and keep the same open to the inspection of the creditors aforesaid, or any creditor that C. W. Israel & Company may not now know of, and should any person or persons thus have a legal demand against the said C. W. Israel & Company not herein above referred to — hereafter appear or become known, then and in this event he or they
36 shall have all the rights of the creditors hereinbefore mentioned in said inventory, and the said S. Davidson is by these presents authorized and required to make a good and sufficient bond, as is required by law, and the said C. W. Israel & Company hereby covenant and agree to adopt all acts done by the said S. Davidson as assignee, and do hereby appoint and constitute the said S. Davidson the lawful agent and assignee and att'y as aforesaid of the said C. W. Israel & Company and of the said above-

named creditors, and it is intended that this assignment is made for the benefit of only such creditors of the said C. W. Israel & Company as will and do consent to accept their proportional shares of said estate and discharge said C. W. Israel & Company, and any such creditors so accepting this assignment shall, as provided by law, release and discharge said C. W. Israel & Company from all further liabilities to such consenting creditors on account of the respective claims: Provided, however, That said creditors shall receive as much as one-third of the amount due and allowed in their favor or established by them as a valid claim against the estate of the said C. W. Israel & Company, and the said S. Davidson is required to furnish a full, fair, and complete inventory of all of the property, both real and personal (which said real estate is situated mainly in the counties of Clay and Archer, in the State of Texas), immediately after taking possession of said property, and the said S. Davidson is required and authorized to pay out any and all money that he may receive in the premises to the creditors aforesaid in settlement of the above demands and in settlement of the costs of executing this trust; and the said Davidson is required to execute this trust as in every respect required by law."

37 "Witness our hands this the 24th day of October, A. D. 1885.

"C. W. ISRAEL & COMPANY,
"By J. N. ISRAEL.
"J. N. ISRAEL."

THE STATE ON TEXAS, }
County of Clay, } ss:

Before me, W. G. Eustis, the undersigned authority, a notary public in and for Clay county, Texas, on this day personally appeared J. N. Israel, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and considerations therein expressed for C. W. Israel & Company and for himself.

Given under my hand and seal of office this the 24th day of October, A. D. 1885.

[SEAL.]

W. G. EUSTIS,
Notary Public, Clay County, Texas.

STATE OF TEXAS, }
County of Clay, } ss:

I, G. W. Ford, county clerk in and for said county, do hereby certify that the foregoing instrument, dated the 24th day of October, 1885, with its certificate of authentication, was filed for record in my office the 24th day of October, 1885, at 1 o'clock p. m., and duly recorded the 26th day of October, A. D. 1885, at 12 m. in the records of said county, in vol. N, on pages 569, 570, & 571.

Witness my hand and the seal of the county court of said county at office in Henrietta, Texas, the day and year last above written.

G. W. FORD,
Clerk County Court, Clay County, Texas.

Said Israel also, as required by law, made out and filed
38 with said deed of assignment in said office where the said deed was filed an inventory duly verified of his assets and liabilities, which included the said collateral note and said funds in hands of this garnishee at date of said assignment.

This garnishee, further answering, avers that said Davidson failed and refused to qualify and give bond as such assignee within the time prescribed by the laws of Texas, whereupon on, to wit, the 30th day of October, 1885, the county judge of said county of Clay did duly appoint one J. T. Craig assignee of said Israel in the place and stead of said Davidson, with all the rights, powers, and duties which, by said conveyance, belonged or were imposed on said Davidson if he had qualified according to law, provided the said Craig should execute a bond, with securities according to law, to be approved and filled in conformity with the laws of said State.

And this garnishee avers that on the same day of the appointment of the said Craig as assignee he executed the necessary bond with sureties, which said bond was, on the 2nd day of November, 1885, duly approved by said court or judge and the same duly filed.

And this garnishee avers that immediately after the execution and approval of said bond the said Craig took possession of the assets and property so as aforesaid conveyed, and has been ever since the duly acting and qualified assignee of said J. N. Israel, theretofore doing business as aforesaid, and on the 26th of October, 1885, said Israel gave notice to this garnishee of said assignment.

This garnishee, further answering, states that under the laws of the State of Texas, in the event of an assignment such as hereinbefore set forth of said J. N. Israel, the creditors of the assignor
39 are, by express provisions of the Texas statute, allowed to prove their claims, although not due, a rebate being made on the same on account of unearned interest, and that a creditor proving claims against funds in the hands of an assignee such as the said J. T. Craig must make a distinct statement within six months from the time of the first publication of the notice for the appointment of the assignee, and file the same with such assignee, supported by an affidavit of the creditor, his agent or attorney, that the statement is true, that the debt is just, and that there are no credits or offsets that should be allowed against the claim.

Said sections of the Texas statute are as follows:

"SEC. 7. Every creditor consenting to an assignment shall, within six months from the time of the first publication of the notice of appointment of the assignee, file with such assignee a distinct statement of the particular nature and amount of his claim against the debtor, which shall be supported by an affidavit of the creditor, his agent or attorney, that the statement is true, that the debt is just, and that there are no credits or offsets that should be allowed against the claim, except as shown by the statement, and no creditor shall take any benefit under any assignment whatever who neglects to file such statement."

"SEC. 13. Claims that are not due may be allowed at their present

value by discounting them at the rate of interest mentioned in the contract, if any; otherwise at the legal rate; and if any creditor holds collateral security of less value than his debt the value thereof may be estimated by the assignee, and only the difference between such sum and the debt shall be allowed."

This garnishee also states that the said plaintiff, after the
40 commencement of his two suits in which this answer is made, instituted a suit against this garnishee in equity in the United States circuit court for the eastern district of Missouri, on a certain check against this garnishee for $11,500, dated the 20th day of October, 1885, given by said J. N. Israel, in his said name and style of C. W. Israel & Company, to said plaintiff, and in said suit such proceedings were had upon bill, answer of this garnishee, and stipulation as to facts that by the judgment and decree of this court this garnishee was decreed to pay the said balance of $5,912.41 to the credit of the said account of C. W. Israel & Company to said plaintiff, upon the ground that said check amounted to an assignment in equity to said plaintiff of said balance. This garnishee intends to appeal from said decree to the United States Supreme Court, but at the present time said decree stands in full force and effect.

This garnishee, further answering said interrogatories, states that a firm of W. L. Chase & Company, doing business in the city of St. Louis, State of Missouri, on the 27th of October, 1885, duly instituted a suit by attachment in the circuit court of St. Louis against said J. N. Israel on a check on this garnishee for $1,000, executed by him under his said style of Exchange Bank of Wichita Falls, on the 24th of October, 1885, to a partnership firm, residing and doing business in Henrietta, Texas, which said firm endorsed said check to said W. L. Chase & Company before the commencement of the last-mentioned suit, and presentment thereof was made to this garnishee on October 27th, 1885. Said W. L. Chase & Company caused, on said 27th of October, 1885, a garnishee summons under said attachment to be duly served on this garnishee.
41 Said W. L. Chase & Company, at the February term, 1886, recovered judgment against said Israel on said check under publication notice, but said garnishment proceeding is still pending and undermined in said court; but if said W. L. Chase & Company should prevail against this garnishee it would have to pay said sum of $1,000, together with interest at six per cent. from the 27th of October, 1885, and costs of that suit, amounting to about $50, which said sum under said garnishment summons, if recovered of this garnishee, would be prior in right and time to the garnishment of plaintiff in the said cases, the garnishment summons of plaintiff in both said suits having been served on November 2d, 1885.

Wherefore, having fully answered, said garnishee asks to be hence discharged with costs and reasonable allowance for attorneys fees in answering and defending against the garnishee summons herein.

BOYLE, ADAMS & McKEIGHAN,
Atty's for Laclede Bank.

UNITED STATES OF AMERICA, *Eastern District of Missouri,* } ss:

Walter H. Trask, being duly sworn, deposes and says that he is the cashier of said Laclede Bank; that he is acquainted with the contents of the foregoing answer, and that the matters and things therein set forth are true.

W. H. TRASK.

Subscribed and sworn to before me this 17th day of May, 1886.
A. P. SELBY, *Clerk.*

42 Said answer of J. N. Israel is in words and figures following, to wit:

Answer of J. N. Israel.

In the Circuit Court of the United States Eastern District of Missouri.

HARRISON B. SCHULER, Plaintiff,
vs.
J. N. ISRAEL *et al.*, Defendants.

Now comes the said J. N. Israel for himself alone and, for answer to the petitions in the above-consolidated cases, says: that he admits the execution of the note set up in one of said petitions, but said defendant avers that said plaintiff ought not to have or maintain his said action to judgment because, as this defendant avers, the said plaintiff, before the commencement of his said suit in the circuit court of St. Louis, commenced by summons his action on the same said note sued on in this suit against said J. N. Israel in the circuit court of the United States for the northern district of Texas, and summons was issued in said case and served on said defendant before the commencement of said suit in said circuit court of St. Louis, and at, to wit, the January term, 1886, of said United States circuit court of Texas, by the judgment and consideration of said court, recovered a judgment against this defendant, J. N. Israel, on said note, whereby said note is now merged in said judgmnt by the operation of the same. Said defendant denies allegations
43 of partnership in pl'ff's petition.

Wherefore this defendant asks to be hence discharged with his costs as to the said action in this court on said note.

Said defendant, J. N. Israel, makes no defence on the check sued on in the other suit commenced in said circuit court of St. Louis, except that by judgment, decree, and consideration of this court in the suit in equity of said plaintiff against the Laclede Bank of St. Louis said plaintiff recovered a decree against said bank for $5,912.41 on said check, which this plaintiff claims as a credit on said check. Defendant J. N. Israel denies all allegations of partnership in pl'ff's pet-.

BOYLE, ADAMS & McKEIGHAN,
Att'ys for J. N. Israel.

Oath of J. N. Israel to allegations of partnership waived.

DYER, LEE & ELLIS,
Att'ys for Pl'ff.

And afterwards, to wit, on the 3rd day of June, A. D., 1886, there was filed in said cause a demurrer to answer of Laclede Bank, in words and figures following, to wit:

Demurrer to Answer of Laclede Bank.

UNITED STATES OF AMERICA, *Eastern District of Missouri.*

In the Circuit Court of the United States.

H. B. SCHULER, Plaintiff,
vs.
J. N. ISRAEL, *et al.*, Defendants.
No. 2,657 and 2,658.
Consolidated.

SAME, Plaintiff,
vs.
SAME, Defendants.

Now at this day comes the above-named plaintiff and de-
44 murs to the answer of the Laclede Bank, garnishee in the above-entitled causes (consolidated), and for grounds of demurrer assigns the following:

1. The assignment of J. N. Israel, as set forth in said garnishee's answer, did not transfer to assignee Craig the property in the State of Missouri so as to defeat the attachment of plaintiff.

2. The alleged deed of assignment by J. N. Israel is void under the laws of the State of Texas.

3. Said deed is in conflict with the assignment laws of the State of Missouri, and, being in conflict, the courts of this State will not hold it valid even if it were good under the laws of the State of Texas.

4. The assignee under said deed of assignment acquired no right to property within the jurisdiction of this State as against subsequent attaching creditors residing either in the State of Kansas or this State.

5. The money to the credit of J. N. Israel in the Laclede Bank at the time of the service of the garnishment should be applied to the payment of plaintiff's judgment, and the fact that the bank held the unmatured notes of J. N. Israel at the time said garnishment was served cannot avail the bank in this proceeding.

6. The facts set up by the Laclede Bank, in its answer to plaintiff's interrogatories, is insufficient in law to constitute a defense to the plaintiff's right to judgment.

DYER, LEE & ELLIS,
Attorneys for Plaintiff.

And afterwards, to wit, on the 3rd day of June, A. D. 1886, there was filed a demurrer to answer of J. N. Israel, in words and figures following, to wit:

45 *Demurrer to Answer of J. N. Israel.*

UNITED STATES OF AMERICA,
Eastern District of Missouri:

In the Circuit Court of the United States for said District.

HARRISON B. SCHULER, Plaintiff,
vs.
J. N. ISRAEL, Defendant.
} No. 3657 and No. 2658.

SAME, Plaintiff,
vs.
SAME, Defendant.
} Consolidated.

Now here at this day comes the plaintiff in the above-entitled cause and demurs to the answer of the defendant herein on the following grounds:

1. The first part of said answer, wherein it is alleged that plaintiff had two suits pending at the same time in two jurisdictions, to wit, in the States of Texas and Missouri, and that subsequently to the commencement of both judgment was rendered on the note in the court in Texas, constitutes no defense, nor is it a bar, to the plaintiff's cause of action in the State of Missouri.

2. Until judgment had there is no merger, and the plaintiff had the right to commence suits by attachments in different jurisdictions wherever property of the defendant could be found.

3. Suit having been commenced in this court and property attached before judgment in the State of Texas the defendant cannot now defeat recovery in this case and release the property attached.

4. The plaintiff is entitled to several judgments in dif-
46 ferent jurisdictions on the same cause of action, but to only one satisfaction.

DYER, LEE & ELLIS,
Attorneys for Plaintiff.

And afterwards, to wit, on the 3rd day of June, A. D. 1886, the following further proceedings were had and appear of record in said cause, to wit:

Stipulation Waiving Jury.

HARRISON B. SCHULER, Plaintiff,
vs.
J. N. ISRAEL *et al.*, Defendants.
} 2657 & 2658. Consolidated.

Now come the parties, by their attorneys, and file the following stipulation:

"It is agreed to waive a jury in above consolidated cases and submit same to the court, both on answer of J. N. Israel to merits and on answer of garnishee, Laclede Bank, and demurrer of plaintiffs to same. Judgment shall be entered on decision of court on same according to such decision, and, if court shall have adjourned, then

nunc pro tunc as of March term of said court. If judgment is for garnishee, Laclede Bank, $250.00 to be allowed as expenses of defending against garnishment."

(Signed) DYER, LEE & ELLIS, *Att'ys for Pl'ff.*
(Signed) BOYLE, ADAMS AND McKEIGHAN,
Att'ys for Israel and Laclede Bank.

And afterwards, to wit, on the 15th day of June, A. D. 1886, the following further proceedings were had and appear of record in said cause, to wit:

47 *Case Submitted.*

HARRISON B. SCHULER, Plaintiff,
vs.
J. N. ISRAEL *et al.*, Defendants. } 2657 & 2658. Consolidated.

Now come the parties, by their attorneys, and this cause is hereby submitted under the stipulation filed herein June 3rd.

And afterwards, to wit, on the 26th day of June, A. D. 1886, the following further proceedings were had and appear of record in said cause, to wit:

Dismissal as to C. W. Israel.

HARRISON B. SCHULER, Plaintiff,
vs.
J. N. ISRAEL *et al.*, Defendants. } 2657 & 2658. Consolidated cause.

Plaintiff, by leave of court, dismisses his suit as to defendant, C. W. Israel, *nunc pro tunc* as of June 15th, 1886.

And afterwards, to wit, on the 26th day of June, A. D. 1886, the following further proceedings were had and appear of record in said cause, to wit:

Judgment.

HARRISON B. SCHULER, Plaintiff,
vs.
J. N. ISRAEL, Defendant; Laclede Bank, Garnishee. } 2657 & 2658. Consolidated cause.

This cause came on to be heard at this term on stipulation and demurrers to the answers of the defendant and garnishee herein, and was submitted by counsel and taken under advisement; and the court, being now fully advised thereof, finds the law on the demurrer of plaintiff to that part of the answer of defendant Israel set-
48 ting up the recovery of judgment on the note sued on for the defendant, and orders that the demurrer be, and the same is, overruled, and, said plaintiff declining to plead over, the court finds for said plaintiff on the check sued on in the sum of $11,756 00.

It is therefore now considered by the court that the plaintiff, Harrison B. Schuler, have and recover of the defendant, J. N. Israel, as well the said sum of $11,756.00, the damages as aforesaid by the

court assessed, as also the costs herein expended, and have execution therefor.

The court finds for defendant, J. N. Israel, on the note sued on, and it is therefore now considered by the court that he go hence without day and have and recover his costs, and that execution issue therefor.

On the demurrer of plaintiff to the answer of the Laclede Bank, garnishee, the court finds the law on said demurrer for said garnishee, and it is ordered that said demurrer be, and the same is, overruled. And thereupon it is ordered that said garnishee be discharged, with an allowance of $250 for answering the same, to be taxed as costs herein.

And afterwards, to wit, on the 26th day of June, A. D. 1886, the following further proceedings were had and appear of record in said cause, to wit:

Bill of Exceptions Filed.

HARRISON B. SCHULER, Plaintiff,
vs.
J. N. ISRAEL *et al.*, Defendants. } 2657 & 2658. Consolidated cause.

Now comes the plaintiff, by Dyer, Lee & Ellis, his attorneys, and presents to the court his bill of exceptions, which is allowed, signed, and ordered to be filed as part of the record herein.

49 And said plaintiff also presents to the court a writ of error to remove this cause to the Supreme Court of the United States and a citation citing and admonishing the said defendant to be and appear at a Supreme Court of the United States, on the first day of the next term thereof, to be begun and holden at Washington, D. C., on the second Monday of October next; which said writ of error is allowed and said citation signed by the judge.

Bond Waived.

And thereupon by consent of parties an appeal bond is waived in said cause.

Said bill of exceptions is in words and figures following, to wit:

Bill of Exceptions.

UNITED STATES OF AMERICA, *Eastern District of Missouri:*

In the Circuit Court of the United States.

H. B. SCHULER, Plaintiff,
vs.
J. N. ISRAEL, Defendant. } Nos. 2657 and 2658. Consolidated.

SAME, Plaintiff,
vs.
SAME, Defendant.

Be it remembered that the demurrer heretofore filed by the plain-

tiff to the answer of defendant Israel *coming* on to be heard by the court, and the court overruled said demurrer; to which ruling of the court the plaintiff at the time excepted.

The demurrer of the plaintiff to the answer of the Laclede
50 Bank, garnishee of the said J. N. Israel, also coming on to be heard at the same time by the court the same was by the court overruled; to which action and ruling of the court the plaintiff at the time duly excepted and brings here his bill of exceptions and prays that the same may be signed, sealed, and made a part of the record, which is accordingly done.

SAMUEL TREAT, *Judge.*

51 UNITED STATES OF AMERICA, }
Eastern District of Missouri, } *ss:*

I, A. P. Selby, clerk of the circuit court of the United States in and for the eastern district of Missouri, do hereby certify the writing hereto attached to be a true transcript of the record and proceedings in consolidated case Nos. 2657 & 2658, of Harrison B. Schuler, plaintiff, against J. N. Israel and Laclede Bank, defendant, as fully as the same remain on file and of record in said case in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office, in the city of St. Louis, in said district, this fourth day of August, in the year of our Lord eighteen hundred and eighty-six.

[Seal of the United States Circuit Court, Eastern District of Missouri.]

A. P. SELBY,
Clerk of Said Court.

52 [Endorsed:] Nos. 2657 & 2658. Consolidated. United States circuit court, eastern district of Missouri. Harrison B. Schuler against J. N. Israel *et al.* Duly certified transcript of the record in the above-entitled cause.

Endorsed on cover: [Stamped:] Supreme Court U. S. Received Sep. 16, 1886. Clerk's office. E. Missouri C. C. U. S. No. 1018. Harrison B. Schuler, plaintiff in error, *vs.* J. N. Israel and the Laclede Bank. Filed September 27, 1886.

120-302

JAN 8 1887
JAMES H. MCKENNEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1886.

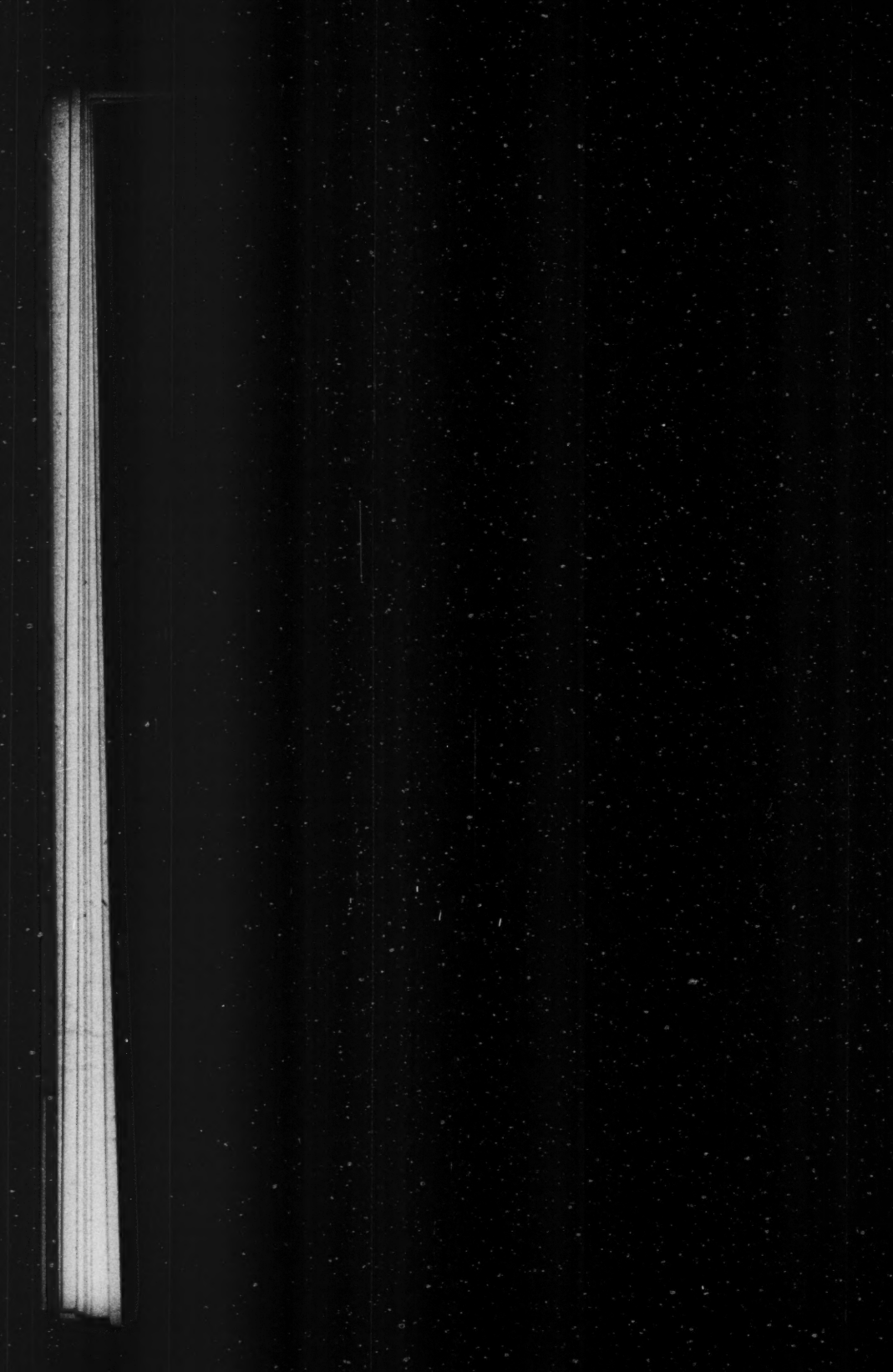
HARRISON B. SCHULER,
Plaintiff in Error,
vs.
J. N. ISRAEL AND LACLEDE BANK,
Defendants in Error.

No. 1018.

STATEMENT, POINTS AND AUTHORITIES, BRIEF AND ARGUMENT FOR PLAINTIFF IN ERROR.

D. P. DYER,
Attorney for Appellant.

Nixon-Jones Printing Co., 210 and 212 Pine Street, St. Louis.



IN THE

Supreme Court of the United States

OCTOBER TERM, 1886.

HARRISON B. SCHULER,
Plaintiff in Error,

vs.

J. N. ISRAEL AND LACLEDE BANK,
Defendants in Error.

No. 1018.

STATEMENT FOR PLAINTIFF IN ERROR.

On the 2d day of November, 1885, plaintiff commenced, in the Circuit Court of the city of St. Louis, two suits against Israel — one on a note and the other on a bank check.

Attachments in aid of the suits were sued out by the plaintiff and the Laclede Bank was garnished. Both of the cases, were, on application of the plaintiff (he being a citizen of the State of Kansas), removed to the Circuit Court of the United States for the Eastern District of Missouri.

In this latter court the cases were consolidated by an order duly entered.

Israel entered his voluntary appearance in the cases thus consolidated and filed an answer. (See p. 26 of printed record.) In this answer Israel admits the execution and delivery of the note to the plaintiff, but states that prior to the commencement of the suit in the Circuit Court of the City of St. Louis, the plaintiff had commenced suit in the Circuit Court of the United States for the Northern District of Texas to recover judgment on the same note, and that in January, 1886, judgment thereon was entered; that the said note was merged in said judgment and that in consequence of such merger no judgment could be entered thereon in the Circuit Court of the United States for the Eastern District of Missouri.

No defense was set up to the check sued on.

Interrogatories were filed to the Laclede Bank as to property, money and credits in its possession belonging to Israel.

To these interrogatories the Laclede Bank made answer. (p. 27.)

The answer of the Bank states that at the time of the service of the garnishment there was to the credit of Israel in said bank the following amounts to wit:

Under the name of C. W. Israel & Co.....	5,912 41
" " " " Exchange Bank of Harold..	1,927 53
" " " " " Bank of Wichita Falls	10,013 15
Total.....	$17,853 09

The answer further stated that it had in its custody certain collateral of J. N. Israel, particularly described in two certain notes of Israel set out in full in the answer. The answer further states that at the time of the service of the garnishment it held two unmatured notes of Israel of $2,500.00, and $8,000,00 respectively and claims that it is entitled to a lien upon so much of the money to the credit

of Israel as would pay these two notes; that this lien is superior to any lien of the plaintiff acquired by the attachment and garnishment.

The answer then sets out in full a deed of assignment made by Israel in the State of Texas to one Davidson, on the 24th day of October, 1885 (p. 21).

The answer then claims that the surplus remaining in its possession (after the payment of the two notes aforesaid), together with all of the collateral, properly belongs to the assignee of Israel and is not subject to attachment at a suit brought by the plaintiff, a citizen of Kansas.

To the answer of Israel, and also to the answer of the Laclede Bank, the plaintiff filed a demurrer (p. 27, 28).

The demurrer to the answer of Israel is as follows: —

Now here at this day comes the plaintiff in the above mentioned cause and demurs to the answer of the defendant herein on the following grounds: —

1. The first part of said answer, wherein it is alleged that plaintiff had two suits pending at the same time in two jurisdictions, to wit, in the States of Texas and Missouri, and that subsequently to the commencement of both, judgment was rendered on the note in the court of Texas, constitutes no defense, nor is it a bar, to the plaintiff's cause of action in the State of Missouri.

2. Until judgment had there is no merger, and the plaintiff had the right to commence suits by attachments in different jurisdictions wherever property of the defendant could be found.

3. Suit having been commenced in this court and property attached before judgment in the State of Texas the defendant can not now defeat recovery in this case and release the property attached.

4. The plaintiff is entitled to several judgments in different jurisdictions on the same cause of action, but to only one satisfaction.

The demurrer to the answer of the Laclede Bank is as follows: —

Now at this day comes the above-named plaintiffa nd demurs to the answer of the Laclede Bank, garnishee in the above-entitled causes (consolidated), and for grounds of demurrer assigns the following: —

1. The assignment of J. N. Israel, as set forth in said garnishee's answer, did not transfer to assignee Craig the property in the State of Missouri so as to defeat the attachment of plaintiff.

2. The alleged deed of assignment by J. N. Israel is void under the laws of the State of Texas.

3. Said deed is in conflict with the assignment laws of the State of Missouri, and, being in conflict, the courts of this State will not hold it valid even if it were good under the laws of the State of Texas.

4. The assignee under said deed of assignment acquired no right to property within the jurisdiction of this State as against subsequent attaching creditors residing either in the State of Kansas or this State.

5. The money to the credit of J. N. Israel in the Laclede Bank at the time of the service of the garnishment should be applied to the payment of plaintiff's judgment, and the fact that the bank held the unmatnred notes of J. N. Israel at the time said garnishment was served cannot avail the bank in this proceeding.

6. The facts set up by the Laclede Bank, in its answer to plaintiff's interrogatories, is insufficient in law to constitute a defense to the plaintiff's right to judgment.

The court below overruled both demurrers, to which plaintiff duly excepted at the time. The plaintiff declining to plead further, final judgment was rendered in favor of Israel and the Laclede Bank. From this judgment the plaintiff sued out a writ of error to this court.

ASSIGNMENT OF ERRORS.

1. The court erred in overruling the plaintiff's demurrer to the answer of Israel.

2. The court erred in overruling the demurrer of plaintiff to the answer of the Laclede Bank.

POINTS AND AUTHORITIES.

I.

The deed of assignment is void even under the laws of Texas.

Miller & Norton, 19th Fed. Rep., p. 719, and authorities therein cited.

II.

The deed of assignment even if valid under the laws of Texas will not be upheld in the State of Missouri, because in conflict with the laws of the latter State on the subject of general assignments.

Askew *v.* LaCygne Bank, 83 Mo., p. 366;
Green *v.* Van Buskirk, 5 Wall. 307;
Harvey et al. *v.* R. I. Locomotive Works, 93 U. S., p. 671;
Brown *v.* Knox, 6 Mo. 302.

III.

The plaintiff in error, although a citizen of the State of Kansas, is equally entitled with the citizens of Missouri to protection under the laws of the latter State.

IV.

The property of Israel, in the State of Missouri, at the time of his assignment in the State of Texas, must be dis-

posed of in accordance with the laws of the State where the property was found, to wit, under the laws of Missouri.

See authorities before cited.

V.

The Laclede Bank, in a proceeding at law against it, cannot set off *unmatured* notes against money standing to the credit of Israel at the time plaintiff 's garnishment was served.

Morse on Banks and Banking, p. 45, and cases cited.

VI.

The demurrer of plaintiff to the answer of Israel should have been sustained. The plaintiff had the right to institute suits by attachment on the same note in both the States of Missouri and Texas, and the fact that judgment was rendered in the court in Texas before the meeting of the court in Missouri could not operate to defeat the attachment in Missouri. The plaintiff was entitled to several judgments, but to the satisfaction of one only.

ARGUMENT.

The most important questions to be considered in this case are,—

1st. Is the deed of assignment set out in the answer of the Laclede Bank valid under the laws of Texas?

2d. If valid under the laws of Texas will it be upheld in the State of Missouri against an attaching creditor who is a citizen of the State of Kansas?

3d. Can the Laclede bank set off the unmatured notes of Israel against the money to his credit in the bank at the time of the service of the garnishment?

These in their order.

The plaintiff in error claims that the following provisions in the deed of assignment renders it absolutely void, to wit:—

"Said assignee shall forthwith take possession of the "property and effects and demands and accounts here- "by assigned and intended to be assigned and with "all reasonable diligence dispose of said property here- "in conveyed by public or private sale for the best "price that can be obtained and convert the same into "money * * * and he shall also as soon as possible "sell, convey and make good titles to said property to the "purchaser or purchasers thereof, said sale or sales to be "made at either public or private sale as may be for the "best interest of said above-named creditors," etc., etc.

In the case of Mullen *v.* Norton, 19 Fed. Rep., p. 719, above cited, Judges Pardee and McCormick held void a similar deed to the one now under consideration.

In the opinion of the court delivered in that case, the following language was employed:—

"The assignment in this case, which is under the third "section, provides: And for said purpose the said Fred "Muller and A. Jacobs are hereby authorized and directed "to take possession at once of the property above conveyed "and convert the same into cash as soon, and upon the best "terms possible for the best interest of our creditors. "This provision authorizes the assignees, in their discre- "tion to dispose of the assigned property on credit. See "Moir *v.* Brown, 14 Barb. 39; Shufelt *v.* Abernethy, "2 Duer, 533; Rapalee *v.* Stewart, 27 N. Y. 311; Hutch- "inson *v.* Lord, 1 Wis. 286; Keep *v.* Sanderson, 2 Wis. "31. For other authorities see Burrill, Assign. Par. 222. "It is a badge of fraud. Carlton *v.* Baldwin, 22 Tex. 731; "and see Burrill, Assign. Par. 221. Such provision is not "authorized by law, the said act of 1879 being silent as to "the method of disposing of assigned property. The non- "consenting creditors, being compelled, under the law, to "submit to a forced stay of execution until the consenting "creditors are paid in full, it follows that a sale on credit, "the same not being authorized by law, hinders and delays "such non-consenting creditors, beyond the sanction of "the law, and consequently defrauds them. It is urged "that the assignee need not sell on credit, and unless he does, "the creditors are not hurt. This may be true, but the credi- "tors are not obliged to await the event. The assignment "placed it in the power and discretion of the assignee to "prolong the execution and closing of the trust for an indef- "inite period. This was not only unauthorized by law, but "was against the policy of the law, for it cannot be denied "that the policy of the law is to secure a speedy settlement "of the trust and distribution of the assigned property. "An assignment in favor of creditors which in effect "authorizes the assignee to sell the property conveyed in "a method not permitted by the statute, must be void; "for contracts and conveyances in contravention of the

"terms or policy of statute will not be sanctioned. See "Jeffray *v.* McGehee, *supra*.

"It is further claimed in argument that to give effect to "the objection urged against the assignment, and to hold "the same invalid for fraud apparent on its face, is to "sanction and permit the very evil which is the subject of "complaint — that is, to give the attaching creditors a pre- "ference, and a preference, too, over creditors who have "been snared and entrapped by the law. To this it is suf- "ficient to answer that the court is compelled to decide "between two sets of preferred creditors — the consenting "creditors and the attaching creditors. The one may be "as meritorious as the other; but while the former may "be open to the charge of collusion, and the latter to the "charge of rapacity, the law favors the diligent and vigil- "ant. The trouble arises with the debtor who wants to go "further than the law of 1879 warrants, in driving credit- "ors to abandon their just claims and demands.

"The demurrer should be sustained; and it is so ordered."

Section six of the amendatory act of 1883 (Session Laws, 46), relied upon by the defendants in error in the court below can have no application to the question here involved. It is not a question of any fraudulent act, intent or purpose of the assignor or assignee — for both of them may have acted in the most perfect good faith — but it is one going to the instrument itself. A party may, in good faith, execute a deed, but if the language employed in the deed itself violates a provision of the statute, courts will hold such conveyance invalid, however honest may have been the purpose in its execution.

II.

The second question is as to whether being good under the laws of Texas it will be upheld in the State of Missouri as against the rights of an attaching creditor who is a citizen of the State of Kansas.

It will be conceded by counsel for defendant in error that the laws of Texas on the subject of assignments are in conflict not only with the laws of Missouri on the same subject but with the laws of Kansas as well. The deed of assignment set forth in the answer of the Laclede Bank contains the following provision: —

"And it is intended that this assignment is made for the "benefit of only such creditors of the said C. W. Israel & "Co as will and do consent to accept their proportional "shares of said estate and discharge said C. W. Israel & Co. "and any such creditors so accepting this assignment shall, "as provided by law, release and discharge said C. W. "Israel & Co. from all further liabilities to such consenting "creditors on account of their respective claims, etc."

This is in the teeth of the Missouri and Kansas statutes, which require assignments to be for the benefit of all creditors, etc. About this conflict there can be no question and it was conceded in the court below and will be in this court, that if the plaintiff in error were a citizen of Missouri the deed of assignment made in the State of Texas and under its laws would not be upheld.

The Supreme Court of Missouri, in the case of Askew *v.* LaCynge Bank (83 Mo p. 366), after reviewing the authorities upon the subject, says: —

"That involuntary assignments by operation of law do "not operate beyond the territory of the State under the "laws of which such compulsory assignment may be made; "but that voluntary *bona fide* assignment of personal "property, wherever situated, passes it to the assignee, "at the time of the assignment, and will have priority over "subsequent lienors; *provided it is not in conflict with "some positive or customary law of the State where the "property may be located.*

"It is admitted in this case that the assignment laws of "Kansas and Missouri are substantially similar. That the "assignment under consideration would be valid if made "in this State. It also appears that the attaching creditor

IN THE

Supreme Court of the United States

OCTOBER TERM, 1886.

HARRISON B. SHULER,
Plaintiff in Error,
vs.
J. N. ISRAEL, AND THE LACLEDE BANK, GARNISHEE,
Defendant in Error.

No. 1018.

BRIEF FOR DEFENDANTS IN ERROR.

J. E. McKEEGHAN,
Attorney for Laclede Bank and J. N. Israel.

Nixon-Jones Printing Co., 210 and 212 Pine Street, St. Louis, Mo.

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STATEMENT.

On the 2d day of November, 1885, the plaintiff in error brought a suit in the Circuit Court of the City of St. Louis against C. W. Israel and J. N. Israel, on a note of ten thousand dollars given to the plaintiff in error and executed in the name and style of C. W. Israel &

Co. It was alleged that $2,500 had been paid on the note and that C. W. Israel and J. N. Israel were partners composing the alleged partnership firm of C. W. Israel & Co. An attachment was also at the same time sued out against the defendants in that suit on the grounds of non-residence, and under the attachment the Laclede Bank was garnisheed on said 2d day of November, 1885, to answer as to any property, moneys, or credits in its hands belonging to said defendants in said suits, or either of them.

On the same day the plaintiff brought a suit on a protested check alleged to have been drawn by said defendants on said Laclede Bank in the name of said C. W. Israel & Co. in favor of the plaintiff in error for $11,250, being the same check which is the subject matter of the equity suit, No. 995, to be submitted to the court with this case.

An attachment was also in like manner sued out in the suit on the check and the Laclede Bank garnisheed in like manner as in first suit.

The plaintiff in error removed both cases to the United States Circuit Court for the Eastern District of Missouri. In that court the two cases were consolidated by stipulation and order of court (Record, 16), and interrogatories were filed to the Laclede Bank as to property, moneys, rights and credits in its hands belonging to said defendants or either of them. The defendant, J. N. Israel, filed an answer. The Laclede Bank filed its answer to the interrogatories (Record, 17 to 25, inclusive), which was that at the date of the service of said garnishment summons on it, viz.: November 2d, 1885, it did not have nor has it since had in its hands, or in its possession, control or charge any property belonging to either of said defendants; nor was it then or since indebted to either of them.

The bank, as the ground of its said general answer to said interrogatories, and as part of the same, alleged that said Shuler was a resident and citizen of the State of Kansas; and that said J. N. Israel was a citizen of Texas on and

prior to the 24th of October, was and had for some time been conducting a banking busines at Henrietta, Texas, under the name and style of C. W. Israel & Co.; also at Harold, Texas, under the name and style of Exchange Bank of Harold; also at Wichita Falls under the name and style of Exchange Bank of Wichita Falls. That at said date of October 24th, 1885, said Israel had to his credit in said bank the following sums of money, viz: $5,912.41 to the credit of his C. W. Israel & Co. account; $10,013.15 to the credit of his Wichita Falls account; $1,927.53 to the credit of his Harold account.

Said answer set up that said Israel was indebted to it on two discounted unmatured notes, one of $2,500 and one of $8,000 with certain collateral specified in the notes, which were worthless, except as to $1,100 collected thereon; that said notes had not been discounted on the faith of said collateral, but solely on the faith and credit (Record, 20,) given to said Israel, who had been for many years a depositor in said bank, and who had during the greater part of the time large sums of money to his credit and had often given and frequently paid his notes.

The answer alleged that said Israel was wholly insolvent and unable to pay said notes; that said Israel on to wit: The 24th of October, 1885, under and in conformity with the laws of the State of Texas made and delivered to one S. Davidson a general deed of assignment which was duly acknowledged, certified and recorded, which deed is copied in the answer and of which notice was given to the bank October 26th, 1885. (Record, 21 to 23 inclusive.)

It was further alleged that said Davidson failed to qualify, whereupon one J. T. Craig was, under said laws of Texas, duly appointed and qualified, and took possession of the property conveyed. Said answer also set up certain sections of the assignment law in Texas with reference to proof of claims against assigned estates. We also refer the Court to pages 5–8 of our brief in equity case, herewith

submitted, for further provisions of the Texas law with respect to assignments.

The answer of J. N. Israel to the petitions on the note and check sued on (Record, 26) denied all the allegations in said petitions of a partnership between C. W. Israel and said J. N. Israel, and admitted his liability on the check. The answer affirmatively set up as a defense to said note of $10,000.00, that prior to the institution of said suit the said plaintiff in error commenced a suit against said defendant J. N. Israel in the Circuit Court of the United States for the Northern District of Texas; that summons was issued in said case and served on said defendant before the commencement of the said suit in Missouri; that at the January Term, 1886, the said plaintiff in error recovered a judgment on said note against said defendant, whereby as it was alleged, said note was merged in said judgment.

On the 3rd day of June, 1886, the plaintiff in error filed a demurrer to the garnishee answer of the bank (Record, 27) and assigned as grounds of demurrer in different forms:—

1st. That the Israel deed of assignment is void under the laws of Texas.

2nd. That said deed of assignment is in conflict with the assignment laws of the State of Missouri and hence will will not be held valid in the courts of Missouri, against attaching creditors either residing in Missouri or Kansas.

3rd. That the money to the credit of J. N. Israel in the Laclede Bank at the time of the service of garnishment (November 2d, 1885) should be applied to the payment of plaintiff's judgment, without regard to Israel's unmatured notes held by the bank.

4th. That the facts set up by the bank are insufficient in law to constitute a defense against the plaintiff.

The plaintiff in error also demurred to the answer of Israel (Record, 28), and assigned as grounds of demurrer: —

1st. That the judgment in the United States Court does not constitute a defense to the note; that there was no merger until judgment.

2d. That the plaintiff is entitled to several judgments in different jurisdictions on the same cause of action, but only to one satisfaction.

A stipulation was filed (Record, 28 and 29), waiving a jury and making final submission of the case both as respected the answer of Israel and the answer of the bank, on the said answers and the demurrer thereto. On the 26th of June, 1886, the court entered a judgment overruling the plaintiff in error's demurrer as to the note, holding that the judgment in Texas merged the same and was a bar to a recovery of another judgment, but giving plaintiff in error judgment for full amount of check.

As to the demurrer of the plaintiff in error to the garnishee answer of the bank, the court overruled it and discharged the bank. From this judgment the plaintiff Shuler has sued out a writ of error to this court.

POINTS AND AUTHORITIES.

The lower court committed no error in overruling the demurrer of plaintiff to garnishee answer of bank.

1st. The deed of assignment of October 24th, 1885, conveyed to the assignee named in the deed and by subsequent appointment to J. T. Craig, all the moneys, credits and other effects of Israel in the bank, and hence on the 2d of November, 1885, when the garnishment summons was served, all such credits or property belonged to and was held for Israel's assignee.

Burrill on Assignments, sec. 102.

An assignment good under law of the State where made is valid in every other State, unless repugnant to the law of such other State *and then it is good except as to the resident creditor of such other State where sought to be enforced.*

Bryan *v.* Brisbin, 26 Mo. 425;
Thurston *v.* Rosenfield, 42 Mo. 480;
Eisner *v.* Beste et al., 32 Mo. 240;
Chaffee *v.* Fourth National Bank, 61 Maine, 514;
Casker *v.* Webster, 2 Wall. Jr. (U. S). 131;
Burrill on Assignments, sec. 310;
Fuller *v.* Sleighty, 28 Ohio St. 355;
Dundas *v.* Bowler, 3 McLean.

2nd. Without regard to the assignment, it being alleged in the garnishee answer and admitted by demurrer that J. N. Israel was wholly insolvent, the bank had in equity a lien or right upon or the right to retain the money

owed by it to Israel until the unmatured notes of Israel were paid.

Ford, administrator, *v.* Thornton, 3 Leigh, 605;
Stephens ex parte, 11 Vesey, 24.
Green *v.* Mandfield, 4 Barr, 214-20;
McClegg *v.* Woodward, 28 Ill. 84.

If this is true, then in an attachment by garnishment of the funds in a bank by its insolvent depositor, or of the debt owed by the bank to the insolvent depositor, the fund or debt cannot be successfully attached or garnished. If the insolvent depositor for any reason could not have maintained a present action against the bank for the fund or debt, then the attaching creditor cannot reach it, as it is only money presently payable without condition or lien on the same which can be attached or garnished.

Drake on Attachment, sec. 523.

3d. A bank has a general lien on all moneys and funds of a depositor in its possession for the balance of the general account.

Morse on Banking, 42-43.

4th. The lower court did not err in overruling plaintiff in error's demurrer to the defendant Israel's answer setting up the judgment on the same note in Texas as a merger of and a bar to the recovery of a second judgment to the same note.

Freeman on Judgments, sec. 221;
McGibney & Co. *v.* Abner, 30 Vt. 538
Rogers *v.* Odell, 39 N. H. 452

ARGUMENT.

It will not be contended but that if the Israel deed of assignment of October 24th, 1885, was valid against creditors it passed the title to the assignee and his successor of all property of Israel held by the bank and all money owed by it to Israel. It is asserted, however, in the demurrer (Record, 27): 1st. That the deed is void under the laws of Texas. 2d. That it is repugnant to the assignment laws of Missouri, and hence will not be enforced in the Missouri courts against creditors, although such creditors do not live in Missouri. Counsel, at the trial in the lower court, relied on Judge Pardee's decision, 19th Federal Reporter, 719, Muller *v.* Norton, to sustain their proposition that the deed of assignment is void under the Texas law.

In that case the deed of assignment under consideration contained the following clause: "And for said purpose the "said Fred Mueller and A. Jacobs (the assignees in the deed) "are hereby authorized and directed to take possession at "once of the property above conveyed, and convert the "same into cash upon the *best terms* possible for the best "interests of our creditors."

Judge Pardee held that this clause impliedly authorized a sale on credit, and therefore it was in law a fraud upon the creditors, as it tended to delay or might have delayed non-consenting creditors. The construction is, we submit, strained, and evinces a judicial disposition hostile to deeds of assignment. But no such clause is found in the Israel deed of assignment; it provides (Record, 21 to 23) that "that "said assignee shall forthwith take possession of the pro- "perty, effects and demands and accounts hereby assigned "and intended to be assigned, and *with all reasonable dili- "gence dispose* of said property herein conveyed by public

"or private sale for the best price that can be obtained, "and *convert the same into money;*" and further on, "And he (the assignee) shall, *as soon as possible*, sell, con- "vey and make good titles to said property to the pur- "chaser or puchasers thereof. Said sale or sales to be made "at either public or private sale as may be for the interest "of said creditors," etc.

Here the utmost reasonable diligence is required in the sales *for money*, and nowhere are the *terms* of the sale (as in Mueller *v.* Norton) left to the assignee. The only discretion given to the assignee is to sell at public or private sale, which discretion is valid.

Burrill on Assignments, p. 328.

But if the Israel assignment had contained a clause authorizing the assignee to sell on credit, and if such a clause would amount to a constructive fraud as tending to delay creditors, it would seem to be clear that under the Texas law such a fraud, or any other fraud, would not vitiate the assignment.

Section six of the amendatory act of 1883 (Session Laws, 46) provides as follows: "And it is further enacted "that *no fraudulent act, intent, or purpose of the assignor* "*or assignee*, shall have the effect to defeat the assignment "or to deprive the creditors consenting thereto from the "benefits thereof; but any such fraudulent act, intent or "purpose on the part of the assignee shall be sufficient "cause for his removal as being an unsuitable person to "perform the trust, and any consenting creditor may be or "become a party to prosecute or defend in any suit or "proceeding necessary or proper for the enforcement of "his rights under such assignments for the protection of "his interests in the assigned property."

It is clear from this clause and other clauses copied in brief in equity case, that the assignment law of Texas is ample and sufficient in itself to right any fraud, actual or

constructive in any assignment without defeating the assignment itself; in many respects it is like the bankrupt act, particularly in disallowance or preferences and the rights given to the assignee to recover property fraudulently transferred by the assignor, etc. An assignee under such a law unlike most assignment laws may properly be held to represent the creditors, as well as the assignor in the administration of the assigned estate.

2nd. It was contended in the lower court and no doubt will be here, that inasmuch as the deed of assignment provides for the assent of creditors to the discharge of the assignor in case the estate shall pay to such assenting creditors one-third of their claims, it is repugnant to the laws of Missouri, and should not be enforced in Missouri, although in Texas, such a provision is expressly authorized. (p. 7, sec. 3, of brief in equity case).

It may be granted that if the case was in one of the Missouri State Courts, and Shuler was a *resident* of Missouri, the deed would not be enforced because such a provision is not recognized by the Missouri laws. But this doctrine, as shown by the authorities cited, is adopted for the protection only of the Missouri creditors of the assignor so far as his property is found in the State, and is not extended to citizens of other States no matter what the laws in their States may be.

The Supreme Court of Missouri in Thurston *v.* Rosenfield, 42 Mo., p. 481, uses this language: "Every State has "the indisputable right to pass laws fixing the status and "regulating the disposal of property within her own juris- "diction; and no principle of comity can be allowed to "interfere with either her express legislation, or what may "be deemed sound policy for the protection of *her own* "*citizens?* But there is no question arising here between "those claiming under the assignment and our own citizens. "The parties are all *non-residents*, and the claimants have "no lien springing out of our own laws for which they seek

"protection. They do not claim the property in specie, "nor set up and assert any prior "right."

Counsel will cite Askew *v.* La Cygne Bank, 83 Mo. 366, in which the court used the following language: "Involuntary assignments by operation of law do not operate "beyond the territory of the State under the laws of which "such compulsory assignment may be made; but voluntary *bona fide* assignments of personal property wherever "situate passes it to the assignee, at the time of the assignment, and will have priority over subsequent liens "provided it is not in conflict with some positive or customary law of the State where the property is situated.

"It is admitted in this case that the assignment laws of "Kansas and Missouri are substantially similar; that the "assignment under consideration would be valid if made "in this State. It also appears that the attaching "creditors can claim no preference over the general creditors in point of merit; we must therefore hold that the "assignee will take the property in preference to the attaching creditors, and there is nothing in the law nor in "intestate comity which would justify the courts of this "State in holding otherwise."

We do not see anything in this decision in conflict with Thurston *v.* Rosenfeld, 42d Mo., *supra*. In both cases the assignment was upheld. In Thurston *v.* Rosenfeld because, although the deed was in conflict with the Missouri laws because it gave preferences, yet the dispute did not affect citizens of Missouri; and in the case of Askew *v.* Bank the assignment was upheld because although a citizen of Missouri was a party and the property was situated in Missouri the laws of Kansas, where the assignment was made, were and are similar to the assignment laws of Missouri.

Counsel will cite, as in the lower court, Green *v.* Van Buskirk, 5 Wall. 307. That case does not reach the point at issue here. That was a case where personal property situated in Illionis was seized and sold under an attachment in favor of a resident of that State. The property had

been previously mortgaged but the mortagage had not been recorded as required by the laws of Illinois. After judgment and sale by the attaching creditor in the Illinois courts the mortgagee, who was a citizen of New York, sued the attaching creditor in the New York courts for the value of the property. This court, on error from the New York court, held that full effect should be given to the Illinois judgment as to property situated in that State, and that the State of Illinois had a right "*to protect itself and its citizens* "*against the inequalities of laws* which are injurious to "their interests."

It will be observed that the Illinois law was one with respect to the transfer of property in Illinois so as to affect creditors with notice. This case presents no such question. In that case, too, tangible personal property was seized; here the controversy is over a debt, a chose in action. If this case was in the Missouri State courts, no rights of its own citizens intervening, they would be as much bound to recognize and protect the rights of the assignee, a citizen of the State of Texas, as the rights of the plaintiff in error, a citizen and resident of the State of Kansas; and inasmuch as the assignee's rights are prior in point of time to the attachment of Shuler the claims of the assignee would prevail. And much more in the United States courts will such a result be arrived at.

The case of Caskie *v.* Webster, 2 Wall. Jr. 131, was where a citizen of Virginia had made an assignment, valid by the laws of that State, of all his property, to another citizen of that State for the benefit of such of his creditors as should assent to certain terms set forth in it and which were not allowed by the State of Pennsylvania. One item of property assigned was a debt due by a resident of Pennsylvania; but before the assignee could get the money from the Pennsylvania debtor a creditor of that State (Pennsylvania) attached it in the United States Circuit Court for a debt which was due him. The question was whether the debt passed to the general

assignee in Virginia, or was held by the attaching creditor in Pennsylvania. The case is in all respects like the one at bar, except the important difference that the debt there was attached by a *resident* creditor, while here, Shuler, the attaching creditor, is like the assignor, Israel, and the assignee, Craig, non-residents, although of different States; nevertheless that court (Justice Grier sitting) decided in favor of the assignee. The court said: "A debt is a mere "incorporeal right. It has no *situs* and follows the per- "son of the creditor. A voluntary assignment of it by "the creditor, which is valid by the law of his domicile, "whether such assignment be called legal or equitable, will "operate as a transfer of the debt, which should be re- "garded in all places. * * * Sitting here as a court "of the United States, we do not think that the different "States of this Union are to be regarded as a general thing "in the relation of States foreign to each other. Espec- "ially ought they not to be so regarded in regard to ques- "tions relating to the commerce of the country, which is "co-extensive with our whole land, and belongs not to the "States, but to the Union."

In Fuller *v.* Steigling, 27 Ohio St. 355, it was held that a *chose in action* assigned by a New York creditor would pass notwithstanding the preference allowed in New York, on the ground that in such cases (assignments of choses in action) the law of the creditor's (assignor's) domicile is controlling.

So also in Dundas *v.* Bowler, 3 McLean (U. S. Circuit Court), an assignment made in Pennsylvania and giving preferences as then allowed in that State, included a mortgage of land in Ohio, in which State preferences in assignments were not allowed, the assignment was upheld.

3rd. But aside from all questions with regard to the assignment, the bank, by reason of the insolvency of Israel, had a lien on right in equity to retain the money or credit of Israel in the bank until the two unmatured notes were

paid. The plaintiff in error (Shuler) by his attachment and garnishment thereunder could not compel the bank to pay over to him any portion of the Israel money or credit, unless Israel himself could have done so. This we take it cannot be disputed. Could Israel, being wholly insolvent, on the 2d day of November, 1885 (leaving out of view now the assignment), have compelled the bank to have paid over to him on any of his deposit accounts the money due thereon to him from the bank? We maintain that he could not provided the bank had applied to a court of equity to prevent it, until the unmatured notes were paid. That this is so is, we think well settled by authority and is perfectly sound on principle. The bank discounted Israel's notes on the faith and credit given to him as a solvent man, together with the belief that he would continue its depositor? Could he, equitably, on failing in business ask for all the money due him and leave the bank with unpaid and uncollectible notes in its hands simply because the notes had not yet matured. The statement of the proposition to the equitable mind furnishes its own answer. Suppose Israel had continued solvent and the Laclede Bank had become insolvent and had been about to sell and transfer the Israel notes without paying to him the money due him, is it not clear that Israel could have enjoined the bank from committing such injustice and wrong. The equity must be mutual whether it is the depositor of the fund and maker of the unmatured notes who becomes insolvent, or the bank, the debtor to the depositor, and the holder of the notes.

In Ford, adminstrator, *v.* Thornton, 3 Leigh, 695, the doctrine here contended for was maintained and was called a right of stoppage in equity on the ground of insolvency. (See, also, pp. 35 and 36, brief and equity case.)

Now if the bank had any right, legal or equitable, to retain the credits of Israel sought to be garnisheed as against Israel, then the creditors of Israel could not by attachment take such credits out of the bank's hands. This is, we take it, an indisputable proposition applicable to every attach-

ment or garnishment, and springs naturally from the very nature of the proceeding.

4th. The court below decided properly in holding that the plaintiff, in error, Shuler, could not recover a personal judgment in that court on the ten thousand dollar note. The plaintiff, before he brought suit in Missouri on the note, had instituted suit by summons in the United States Court in Texas, and had also got service of it on Israel, which suit Shuler prosecuted to judgment at the next January term of that court.

The authorities cited, viz.: Freeman on Judgments, sec. 221; 30 Vt. 538, McGibney *v.* Aber, and 39 N. H. 452, Rogers *v.* Odell, fully sustain the lower court. It is true a suit on the same cause of action in one jurisdiction is not abated by a suit in another jurisdiction, either previously or subsequently brought, but as soon as either in one jurisdiction or the other, the suit is prosecuted to judgment, there is a merger of the cause of action and it is no longer the subject of an action and the judgment is a bar to the further prosecuting of the suit in the other jurisdiction. This was held in the cases cited where the defendant, a citizen of New Hampshire, was sued simultaneously by the plaintiff both in New Hampshire and Vermont upon the same cause of action. The courts referred to put their decisions upon the provision of the constitution of the United States in article four, section four, which provides that full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State, etc. That is, inasmuch as in the State where the judgment is rendered the cause of action is merged and no second action can be maintained therein; therefore the same effect and credit shall be given to the judgment in every other State.

We respectfully submit that the judgment of the Circuit Court should be affirmed.

J. E. McKEIGHAN,

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